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OFFICE OF THE FEDERAL REGISTER

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 10, 2012
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 417

[Docket No. FSIS–2012–0012]

New Analytic Methods and Sampling Procedures for the United States National Residue Program for Meat, Poultry, and Egg Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it is restructuring the United States National Residue Program (NRP) with respect to how sampling of chemical compounds and animal production and egg product classes is scheduled. To complement this new approach to sampling and scheduling, the Agency is implementing several multi-residue methods for analyzing samples of meat, poultry, and egg products for animal drug residues, pesticides, and environmental contaminants in its inspector-generated testing program. These modern, high-efficiency methods will conserve resources and provide useful and reliable results while enabling FSIS to analyze each sample for more chemical compounds than was previously possible.

DATES: New methods and procedures will be effective 30 days from publication of this notice.

ADDRESSES: FSIS invites interested persons to submit comments on this document. Comments may be submitted by either of the following methods:

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

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

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2011–0012. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: For information: Contact Rachel Edelstein, Deputy Assistant Administrator, Office of Policy and Program Development, at (202) 720–0399, or by fax at (202) 720–2025.

SUPPLEMENTARY INFORMATION:

I. Background

FSIS administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 453 *et seq.*), and the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) to protect the health and welfare of consumers by regulating the meat, poultry, and egg products produced in federally inspected establishments. Through its inspections, the Agency endeavors to prevent the distribution in commerce of any such products that are adulterated or misbranded, thereby reducing the risk of foodborne illness from FSIS-regulated products. One way in which the Agency effects its regulatory program is through the United States National Residue Program (NRP). The NRP is designed to protect the public from exposure to harmful levels of chemical residues in meat, poultry, and egg products produced or imported into the United States. The NRP requires the cooperation and collaboration of several agencies for successful design and implementation. FSIS, the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA) of the Department of Health and Human Services are the Federal agencies primarily involved in managing this program. EPA and FDA have statutory authority to establish residue tolerances through regulations that limit the quantity of a chemical for the protection of public health. FDA, under the Federal Food, Drug, and Cosmetic Act, establishes tolerances or action levels for veterinary drugs, food additives, and environmental contaminants. EPA, under the Federal Insecticide, Fungicide and Rodenticide Act (as modified by the Food Quality Protection Act), establishes tolerance levels for registered pesticides. Title 21 CFR sets out tolerance levels established by FDA; Title 40 CFR sets out tolerance levels established by EPA.

The NRP is designed to provide a structured process for identifying and evaluating chemical compounds of concern in food animals; collecting, analyzing and reporting results; and identifying the need for regulatory follow-up when violative levels of chemical residues are found. The NRP tests for the presence of chemical compounds, including approved (legal) and unapproved (illegal) veterinary drugs, pesticides, hormones, and environmental contaminants that may appear in meat, poultry, and egg products.

A scheduled residue sampling program is developed annually by representatives from FSIS, FDA, EPA, and other Federal agencies, including the USDA Agricultural Research Service (ARS) and Agricultural Marketing Service (AMS) and the Centers for Disease Control and Prevention (CDC). These agencies meet at least once a year as part of the Surveillance Advisory Team (SAT). The SAT creates the annual sampling plan (per calendar year) using sample results from the NRP, information that the agencies have accumulated during investigations, and information from veterinary drug inventories that FDA has compiled during on-farm visits. The agencies create a list of chemical compounds for testing and rank them using mathematical equations that include variables for public health risk and regulatory concern. In addition to establishing a relative ranking for the chemicals, the SAT determines the compound/production class pairs of public health concern and evaluates FSIS laboratory capacity and analytical

methods to devise a final sampling plan. FSIS publishes the final sampling plan in the *National Residue Program Sampling Plan,* which is traditionally referred to as the Blue Book.

Since 1967, FSIS has administered the NRP by collecting samples from meat, poultry, and egg products and analyzing the samples at one of three FSIS laboratories. A basis for concern appears when an FSIS laboratory detects a chemical compound level in excess of an established tolerance or action level in a sample. FSIS shares laboratory findings that exceed established tolerances and action levels with FDA and EPA. If the findings are for imported product, FSIS shares them with the competent authority in the foreign country from where the product originated. FDA has jurisdiction on-farm, and FSIS assists FDA in obtaining the names of producers and other parties involved in offering the animals for sale. FSIS informs producers through certified letters when an animal from their business has a violative level of a residue. FDA and cooperating State agencies investigate producers linked to residue violations. If a problem is not corrected, subsequent FDA visits could result in an enforcement action, including prosecution.

At the request of industry, FSIS posts a weekly list of repeat residue violators. The Residue Repeat Violators List includes producers associated with more than one violation on a rolling 12-month basis. Because FSIS updates this list weekly, FDA may not have investigated each violation. The list provides helpful information to processors and producers who are working to avoid illegal levels of residues, serves to deter violators, and enables FSIS and FDA to make better use of their resources.

Recognizing that a scientifically sound chemical residue prevention program is essential to encourage the prudent use of pesticides and veterinary drugs in food animals, in the late 1990s FSIS implemented the Hazard Analysis and Critical Control Points (HACCP) inspection system in all federally inspected meat and poultry establishments to verify that, among other things, the establishments have effective residue controls in their food production systems. In pertinent part, the HACCP regulations (9 CFR Part 417) require that FSIS-inspected slaughter establishments identify all food safety hazards, including drug residues, pesticide residues, and chemical contaminants, that are reasonably likely to occur before, during, and after entry into the establishment and establish preventive measures to control these hazards. FSIS will take regulatory action against an establishment that does not have an adequate chemical residue control program in place.

NRP Operating Structure

In practice, the NRP consists of three separate but interrelated chemical residue testing programs: Scheduled sampling, inspector-generated sampling, and import sampling. This basic structure has been in existence since 1967, though modified over the years to adjust to emerging and reemerging chemical residue concerns and to improvements in testing methodologies.

Under the current scheduled sampling program, FSIS calculates the number of samples needed for the scheduled sampling as part of a "paired sampling" protocol. Since the 2006 residue program, FSIS has sampled 230 or 300 animals for each chemical compound/production class pair. For instance, if FSIS scheduled heifers to be tested for four different chemical compound classes (for example, antibiotics, chlorinated hydrocarbons, β-agonists, and sulfonamides), FSIS inspectors would collect approximately three hundred samples for each of the chemical compound classes. Therefore, FSIS inspectors would collect samples from approximately 1,200 heifers (300 samples by four chemical compound classes = 1,200 samples collected). Applying sampling rates of 230 or 300 in food animals and egg products assures FSIS a 90 percent and 95 percent probability, respectively, of detecting chemical residue violations if the violation rate is equal to or greater than one percent. For the Calendar Year (CY) 2011 domestic scheduled sampling program, FSIS laboratories completed 21,555 analyses across multiple production classes and chemicals. Several of the analytical methods tested for multiple compounds.

New NRP Structure

During CY 2012, in contrast, FSIS is significantly modifying the scheduled sampling approach by eliminating the "paired sampling" protocol. FSIS will be analyzing fewer samples but by using multi-residue methods will actually be assessing more compounds per sample. As part of this new approach, FSIS is establishing three tiers of sampling for the NRP.

Tier 1—New Scheduled Sampling Program

The new Tier 1 resembles the current scheduled sampling program and should be understood as an exposure assessment. Where the current scheduled sampling program has collected samples from each production class, the new FSIS program will rotate production classes through Tier 1. Where FSIS has allocated a maximum of 300 samples per chemical compound class in the traditional program, the new structure will allocate approximately 800 samples per chemical compound class for each of the production classes tested in Tier 1.

Under Tier 1 during CY 2012 domestic scheduled sampling program, FSIS will run 6,400 samples through 12 multi-residue methods across nine production classes of meat and poultry, which represent 95 percent of the meat and poultry consumed domestically. Eliminating the "paired sampling" protocol will result in more samples run per production class and more analytes targeted. Samples from Tier 1 will be analyzed at either the FSIS Eastern or Western laboratories.

New Scheduled Sampling Program Tier 2

The new Tier 2 will resemble the traditional inspector-generated sampling program at the establishment level. The inspector-generated program is a targeted testing program in which field public health veterinarians make the determination to perform in-plant screens on carcasses because they suspect that animals or carcasses contain higher than allowable levels of chemical residues. Samples from carcasses having positive in-plant screens are sent to the FSIS Midwestern Laboratory for confirmation, and the carcass is held pending results. In 2010, field personnel completed more than 200,000 in-plant screens resulting in almost 7,000 positive samples submitted to the FSIS Midwestern Laboratory for confirmation. FSIS implemented the newest in-plant screen (Kidney Inhibition Swab (KIS™) test) in 2009. and since then, the Midwestern Laboratory has instituted a policy of repeating the KIS™ test on positive in-plant KIS™ screens received from the field. In 2012, FSIS will begin using a multi-analytic screening method discussed below on inspector-generated in-plant screen positives submitted to the Midwestern Laboratory.

Simultaneously, FSIS will discontinue the use of the 7-plate bioassay in the Midwestern Laboratory as a primary screen for field positive samples. Inspector-generated samples will be tested using the updated multi-residue analytic screening method on in-plant samples described below in the section on New Methodology. Because the multi-analytic method is significantly superior to the KIS™ test, it will be unnecessary to repeat the

KIS™ test on field-screen positive samples submitted to the Midwestern Laboratory. Hence, the turnaround time for availability of regulatory results will be reduced.

FSIS will continue, however, to use the bioassay for quantification of those veterinary drugs having tolerances associated with the bioassay as required by FDA New Animal Drug Applications (NADA).

The new Tier 2 also will absorb the traditional exploratory assessment program at the production class and compound class level. Exploratory assessments are targeted sampling plans designed, for example, in response to information gained from previous exposure assessments and intelligence from other agencies. Consequently, FSIS may use the data results from Tier 1 sampling to inform the type of sampling that will occur in Tier 2.

New Scheduled Sampling Program Tier 3

FSIS is further planning a Tier 3 level, which the Agency anticipates will be similar in structure to the exploratory assessment program in Tier 2, with the exception that Tier 3 will encompass targeted testing at the herd or flock level. FSIS anticipates that certain chemical exposures may occur that involve more than one animal or bird. For instance, producers may administer some veterinary drugs to a herd or a flock (for example, growth promotants or antibiotics given in the feed) in a way that involves misuse. In addition, livestock and birds may be exposed unintentially to an environmental contaminant. Therefore, a targeted testing program designed for livestock or flocks originating from the same farm or region may be necessary on occasion to determine the level of a chemical or chemicals to which the livestock or the birds in the flock have been exposed. Tier 3 will provide a vehicle for developing information that will support future policy development within the NRP. FSIS is evaluating implementation issues and requirements for Tier 3 activities.

Import Sampling

The import-sampling program will be structured using the Tier 1 and 2 frameworks. In CY 2012, FSIS intends to collect approximately 1300 import samples—500 samples under Tier 1 and 800 samples under Tier 2. It also intends to screen a subset of these samples for unknown compounds in the FSIS Food Emergency Response Network (FERN) laboratory.

New Methodology and Sampling Procedures

The analytical methods that have been used for many years in the NRP to measure veterinary drug residues in meat, poultry, and egg products are laborious, expensive, and time consuming and, as a result, sometimes prevent the timely testing of food products before they are released into the marketplace. More modern, performance-based analytical methods can reduce cost, increase the number of analytes that can be measured, and improve precision and accuracy while also shortening turn-around time. Modern methods use multi-residue techniques to quantify a larger number of analytes with greater precision (repeatability) and accuracy (degree of closeness to actual value). Such methods can often be performed with faster throughput and at lower cost than conventional single residue methods. In the food regulation arena, improved analytical methods are necessary if regulatory agencies are to effectively monitor for the increasing number of chemical residues and to protect public health.

This notice announces the adoption by FSIS of a new screening method for antibiotics and environmental contaminants. The current official FSIS screening methodology for antibiotics is a 7-plate bioassay. The 7-plate bioassay screen has several drawbacks: (1) It only works for microbial growth-inhibiting residues (certain antibiotics within and among classes); (2) it is not sensitive enough for sulfonamides and fluoroquinolones in relation to their tolerances, but it is much too sensitive as a screen for tetracyclines and certain aminoglycosides with high tolerances; (3) it does not distinguish one drug from another in the same class; (4) the results can be difficult to interpret, especially when multiple drugs are present; (5) it is prone to unknown microbial inhibition responses; (6) it takes a team of personnel to set up the assay and more than 16 hours to obtain the results; and (7) the measurement uncertainty associated with the 7-plate bioassay is large compared with other methods.

The new multi-residue method (MRM) being implemented by FSIS provides significant improvements: (1) It can screen for a variety of analytes, not just antibiotics; (2) the method can be validated at levels appropriate in relation to tolerances; (3) because of the power of mass spectrometry, it can clearly distinguish individual analytes, even if multiple drugs are present in the same sample; (4) unknown microbial inhibition responses would be mitigated; and (5) the time and personnel needed to obtain results is reduced.

The 52 analytes shown in the following table are appropriate for inclusion in the new MRM at and above the level specified. Analytes that were not analyzed during the 2011 NRP sampling plan and had not been included for testing in previous years are in italics.

ANALYTES AND APPLICABILITY LEVEL

[(μ g/g) for MRM]

Analyte	Bovine kidney	Porcine kidney	7-plate bioassay (ppm)
Ampicillin	0.02	0.02	0.05
Beta-dexamethasone	0.05	0.05	.....
Cefazolin	0.2	0.2	.....
Chloramphenicol	0.006	0.006	20
Chlortetracycline	1	1	0.05
Cimaterol	0.012	0.003	.....
Ciprofloxacin	0.025	0.025	.....
Clindamycin	0.05	0.05	.....
Cloxacillin	0.02	0.02	1.6
Danofloxacin	0.025	0.025	.....
DCCD (marker for Ceftiofur)	0.2	0.2	.....
Desthylene Ciprofloxacin	0.025	0.025	.....
Dicloxacillin	0.2	0.2	.....

ANALYTES AND APPLICABILITY LEVEL—Continued

[(μ g/g) for MRM]

Analyte	Bovine kidney	Porcine kidney	7-plate bioassay (ppm)
Difloxacin	0.025	0.025	
Enrofloxacin	0.025	0.025	
Erythromycin A	0.05	0.05	0.25
Florfenicol	0.1	0.1	
Florfenicol Amine *		0.15	
Flunixin	0.0125	0.0125	
Gamithromycin	0.05	0.05	
Lincomycin	0.05	0.05	1.5
Nafcillin	0.2	0.2	
Norfloxacin	0.025	0.025	
Oxacillin	0.2	0.2	
Oxyphenylbutazone *	0.05		
Oxytetracycline	0.5	0.5	0.4
Penicillin G	0.1	0.1	0.05
Phenylbutazone *		0.05	
Pirlimycin	0.25	0.25	
Prednisone	0.05	0.05	
Ractopamine	0.003	0.003	
Salbutamol	0.006	0.003	
Sarafloxacin	0.025	0.025	
Sulfachloropyridizine	0.05	0.05	
Sulfadiazine	0.05	0.05	
Sulfadimethoxine	0.05	0.05	
Sulfadoxine	0.05	0.05	
Sulfaethoxypyridazine	0.05	0.05	
Sulfamerazine	0.05	0.05	
Sulamethazine	0.05	0.05	150
Sulfamethizole	0.05	0.05	
Sulfamethoxazole	0.05	0.05	
Sulfamethoxypyridazine	0.05	0.05	
Sulfanilamide *	0.1		
Sulfanitran	0.05	0.05	
Sulfapyridine	0.05	0.05	
Sulfaquinoxaline	0.05	0.05	
Sulfathiazole	0.05	0.05	
Tetracycline	0.5	0.5	0.4
Tilmicosin	0.12	0.24	0.5
Tylosin	0.1	0.2	1
Zearalanol *		0.012	

* This analyte is not applicable for bovine kidney in the MRM.

With the new sampling and analytic methods, approximately 6,400 samples of two pounds of muscle and one pound each of kidney and liver will be collected, in contrast to approximately 20,000 samples collected per year under the current system in which the Agency collects one pound each of muscle, kidney, and liver. Although FSIS inspectors will be collecting more muscle with every sample, they will be collecting far fewer samples.

Cost-Benefit Analysis

The new methodologies will result in additional costs for the Agency only for the purchase and maintenance of new equipment that will enable the FSIS laboratories to use the new multi-residue method. Equipment for the Midwestern Laboratory was replaced and charged under the old program. The additional purchase of the same equipment for the Eastern and Western Laboratories is anticipated to cost $250,000 per instrument, resulting in a total cost in the second year of implementation of $550,000 for two instruments and service maintenance. (Maintenance of the 2 instruments is at the rate of 10 percent of the cost of each instrument.) FSIS is exploring the possibility of leasing this equipment, which would significantly reduce the startup cost and eliminate the maintenance cost. The annualized cost of the instruments plus maintenance over 6 years at 7 percent equals approximately $112,000 and, if discounted at 3 percent, equals about $108,000. The Agency does not expect a significant impact on other laboratory resources because of the instrument purchases. In sum, FSIS sees only a small cost to the taxpayer in implementing the new methodology.

As stated above, under the new system approximately 6,400 samples of two pounds of muscle and one pound each of kidney and liver will be collected, in contrast to approximately 20,000 samples collected per year under the current system in which the Agency collects one pound each of muscle, kidney, and liver. The muscle samples will be larger, but the total number of samples collected will be much smaller. The smaller number of samples required will result in cost savings to FSIS that will be realized through reductions in special delivery shipments and in inspector time spent collecting samples. At approximately $20 a shipment, a reduction of approximately 13,600 samples that will not need to be collected will equal approximately $272,000 saved annually. At approximately 30 minutes allowed for an inspector to collect and package a

sample, the savings for 13,600 samples will equal approximately $218,280.

Thus, given annualized costs of approximately $112,000 (7 percent) or $108,000 (3 percent) and annual recurring benefits of $490,280, net annual benefits exceed the costs by approximately $378,280.

Benefits to the public health are likely to occur because the Agency will be able to test for more residues with the additional new methods, but those benefits cannot be quantified at this time.

Impact on Small Entities

The new sampling program will operate according to a scheduling algorithm that will ensure that establishments are sampled in proportion to their production volume, and the Agency expects no negative impact on small businesses. Because of the design of the algorithm used for the new sampling program, small businesses may be sampled less frequently than is the case under the current system. This differential in frequency of sampling is likely to offset any economic losses conceivably resulting from the increased size of an individual sample.

Expected Changes in Violation Rates

The nine classes to be sampled for CY 2012 under the new program are specified as Bob Veal, Beef Cows, Dairy Cows, Steers, Heifers, Market Swine, Sows, Young Chicken, and Young Turkey. The number of samples taken for nine species classes for CY 2012 will be 800 per class except for steers and heifers, which have 400 each. The total allocation per species class and the number of samples allocated per species class may change, as will the species classes sampled in successive years. Assuming a constant rate of violations estimated from those in CY 2011, the number of expected violations will tend to increase in some but not all cases even though the total number of samples will decrease. This is because the number of analyses run per sample will be increased in CY 2012 compared to CY 2011. Specifically, based on historical data on chemical residue violations, the Agency expects that Bob Veal, Beef Cows, and Sows may show some increase in violations, while Dairy Cows, Steers, Heifers, Market Swine, Young Chicken, and Young Turkey may show no change in violations. The total net increase in violations expected is unlikely to have a significant impact because the residue violative rate is very low.

Impact on Foreign and State Stakeholders

The proposed plan remains statistically structured relative to sample collection of imported products. FSIS and other federal agencies will continue to select chemicals tested within the U.S. program using a risk-based approach. FSIS expects countries exporting meat, poultry, and egg products to the United States to control chemical residues in the products that they export. FSIS will continue to require foreign countries to maintain equivalent residue control programs (9 CFR 327.2(a)(2)(iv)(C)). Therefore, FSIS does not anticipate any trade issues or international consequences.

States that administer "at least equal to" cooperative State meat or poultry inspection (MPI) programs need to complete and sign an "Annual Statement of Defensible Laboratory Results" as part of their annual "at least equal to" self-assessment. States under the Cooperative Interstate Shipment Program must demonstrate that their laboratory services used to analyze regulatory samples are capable of producing results that are the "same as" those obtained by FSIS laboratories. Requirements for demonstrating "same as" status can be found at *http://askfsis.custhelp.com/app/answers/detail/a_id/1622/related/1*. State laboratories operating under the Cooperative Interstate Shipment Program need to use the protocols for analytical tests required for FSIS regulatory activities on meat and poultry and egg products described in the FSIS Chemistry, Microbiological, and Pathology Laboratory Guidebooks. The authorities of affected States should take note of the methodological developments described in this notice.

Additional Public Notification

FSIS will announce this document online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on June 29, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–16571 Filed 7–5–12; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2012–0092]

RIN 3150–AJ16

Technical Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to make technical corrections, including updating the street address for its Region I office, correcting authority citations and typographical and spelling errors, and making other edits and conforming changes. This document is necessary to inform the public of these non-substantive changes to the NRC's regulations.

DATES: This rule is effective August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Borges, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3675, email: *Jennifer.Borges@nrc.gov*.

ADDRESSES: Please refer to Docket ID NRC–2012–0092 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0092.
- *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*.
- *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.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is amending its regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Chapter I to make technical corrections. These changes include correcting the authority citations for 10 CFR parts 1, 2, 4, 7, 9, 10, 12, 13, 14, 15, 16, 19, 20, 21, 26, 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 51, 52, 54, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 81, 95, 100, 140, 150, 160, 170, and 171; updating the street address for its Region I office; correcting typographical and spelling errors; and making other edits and conforming changes.

II. Summary of Changes

10 CFR Part 4

Revise Nomenclature. The words "handicap" and "handicapped" are replaced with the words "disability" and "disabled," as appropriate.

10 CFR Part 10

Correct Title Designation. The position formerly entitled, "Deputy Executive Director for Information Services and Administration and Chief Information Officer," no longer exists. A new position has been created and designated the title of "Deputy Executive Director for Corporate Management." This new title designation replaces the former title in 10 CFR part 10.

10 CFR Part 20

Revise Office of Management and Budget (OMB)-Approved Information Collection List. In § 20.1009(b), the list of the OMB-approved information collection requirements is revised to remove the reference to § 20.2008 because the section no longer exists.

10 CFR Part 30

Revise Mailing Address. In § 34.20(a)(1), the mailing address of the American National Standards Institute, Inc., is revised to include their new mailing address.

Correct Reference. In § 30.34(h)(1)(ii), the section number under the reference to Title 11 of the United States Code (11 U.S.C.) is incorrect. In this paragraph, the reference "11 U.S.C. 101(14)" is replaced with the reference "11 U.S.C. 101(15)."

10 CFR Part 40

Revise OMB-Approved Information Collection List. In § 40.8, a new paragraph (c)(6) is added to the list of OMB-approved information collection requirements to include references to §§ 40.25 and 40.35, which have been approved by OMB.

Insert Missing Language. In appendix A to 10 CFR part 40, section I, criterion 4(d), the phrase "(on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10 h:1v)" was included in the original final rule, but was inadvertently omitted in the most recent amendments, even though Criterion 4 has not been amended since the original final rule. This resulted in incomplete language. In criterion 4(d), the phrase is added to read "(on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10 h:1v or less)."

Correct Typographical Error. In appendix A to 10 CFR part 40, section I, criterion 8A, the phrase "that is not corrected" is revised to read "that if not corrected." In this phrase, the word "is" is replaced with "if."

10 CFR Part 50

Revise OMB-Approved Information Collection List. In § 50.8(b), the list of OMB-approved information collection requirements is revised to add references to § 50.150 which was inadvertently omitted in the most recent amendments.

Correct Typographical Error. In appendix R to 10 CFR part 50, section III, paragraph G.3, the phrase "Alternative or dedicated" was inadvertently revised to read "Alternative of dedicated." In this phrase, the word "of" is replaced with "or."

10 CFR Part 51

Correct Address. In § 51.121(b), the addressee section, "ATTN: Chief, Rules and Directives Branch, Office of Administration" is revise to read, "ATTN: Rules, Announcements, and Directives Branch, Office of Administration" and the email address, "*NRCREP@nrc.gov*" is removed.

Correct Office Title. In § 51.122, the name of the office, formerly called, "Office of Information Resources Management," is revised to read "Office of Information Services."

10 CFR Part 71

Revise Table Entries and Footnote for Consistency. In appendix A to 10 CFR part 71, Table A–1, the values for the entries Bi–205, Cm–248, Eu–150 (long lived), and Te–132 (a), are revised for consistency with Title 49 of the Code of Federal Regulations, section 173.435. In addition, in Table A–1, footnote b is revised for clarity.

10 CFR Part 72

Revise OMB-Approved Information Collection List. In § 72.9(b), the list of OMB-approved information collection requirements is revised to remove the reference to §§ 72.8 and 72.216 because these sections no longer exist.

10 CFR Part 73

Revise OMB-Approved Information Collection List. In § 73.8(b), the list of OMB-approved information collection requirements is revised to add references to §§ 73.23 and 73.51 which have been approved by OMB.

Revise Language for Clarity. In § 73.55(e)(1)(ii), the word "physical" is added. The insertion of the word "physical" in this paragraph aids the reader in identifying the correct plan from among the ones defined in § 73.55(a).

In § 73.55(k)(8)(ii), the phrase, "indirect and neutralize the threat" is revised to read, "indirect and neutralize threats" for clarity and consistency with § 73.55(k)(1).

In § 73.55(m)(2), the phrase, "but not be limited to" is revised to read "but not limited to" for clarity and consistency with § 73.55(n)(1)(ii).

In § 73.55(m)(3), the first and second sentences are revised so that the word "and" is added, the comma following the word "form" is removed, and the word "operation" is revised to read "operations." In § 73.55(m)(3), the sentence structure is revised for clarity.

In § 73.55(n)(1)(v), the word "component" has been revised to a plural term for consistency with § 73.55(o)(1).

In § 73.56(h)(4), the paragraph heading for the introductory text of paragraph (h)(4)(ii) is revised to provide clarification between the two types of interruptions discussed in this section. In paragraphs (h)(4)(ii)(A) and (B), paragraph headings are added for clarity and consistency.

In § 73.56(i)(1)(iv), the first sentence is revised to provide clarity and specify the amount of days that constitute an annual supervisory review.

In appendix C to 10 CFR part 73, section I, the word "Licensee" has been revised to a plural term to be consistent with the rest of the entities listed in the sentence.

In appendix C to 10 CFR part 73, section II, paragraphs B.3.c.(i) and B.3.c.(v)(4), the compound word "defense in depth" was not hyphenated. In these paragraphs, the compound word "defense in depth" is revised to read "defense-in-depth" for consistency with § 73.55(b)(3)(ii).

In appendix C, section II, paragraph B.3.c.(iii) is revised to remove the phrase, "training and qualification plans" for clarity and consistency with § 73.55(a)(1).

In appendix C to 10 CFR part 73, section II, paragraph B.3.c.(v)(1), the reference "performance objectives of § 73.55(a) through (k)" is replaced with the reference "performance requirements and objectives of § 73.55(a) through (k)."

In appendix C to 10 CFR part 73, section II, paragraph C.2, the phrase "Cyber Security Plan" is added as this plan is now part of the security program review.

Correct References. In § 73.55(c)(4), (d)(3), (g)(8)(iii), and appendix C to 10 CFR part 73, section II, paragraph A.(4), the title of appendix B to 10 CFR part 73 is removed and replaced with the title of section VI of appendix B to 10 CFR part 73.

In § 73.55(c)(5), the title of appendix C to 10 CFR part 73 is removed and replaced with the correct title and reference to section II of appendix C to 10 CFR part 73.

In appendix B to 10 CFR part 73, section VI, paragraph H.1., the reference to § 73.55(r) is replaced with the reference "§ 73.55(q)."

In appendix B to 10 CFR part 73, section VI, paragraph I, the reference to § 73.55(n) is replaced with the reference "§ 73.55(m)."

In appendix C to 10 CFR part 73, section II, paragraph C.1, the reference to § 73.55(n) is replaced with the reference "§ 73.55(m)."

In appendix C to 10 CFR part 73, section II, paragraph C.3, the reference to § 73.55 is replaced with the reference "§ 73.55(q)."

Correct Typographical Error. In § 73.55(i)(4)(ii)(G), the word "the" was omitted due to a clerical error. In this paragraph, the word "the" is added between the words "of" and "final" to correct the sentence structure.

In § 73.56(h)(4)(i) and (h)(4)(ii)(B), the word "proceeding" has been replaced with the word "preceding."

In appendix B to 10 CFR part 73, section VI, paragraph C.3.(k)(3), an "r" was inadvertently omitted in the word "though." In this paragraph, the word "though" is replaced with the word "through."

Change in Street Address for Region I

The street address of the NRC Region I office has been changed. The new address is incorporated into the following sections of the NRC's regulations: § 1.5(b)(1), appendix D to 10 CFR part 20, § 30.6(b)(2)(i) and (b)(2)(ii), § 40.5(b)(2)(i) and (b)(2)(ii), § 55.5(b)(2)(i), § 70.5(b)(2)(i), and appendix A to 10 CFR part 73.

Revise Authority Citations

The authority citations for the following NRC regulations are revised to include conforming administrative changes: 10 CFR parts 1, 2, 4, 7, 9, 10, 12, 13, 14, 15, 16, 19, 20, 21, 26, 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 51, 52, 54, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 81, 95, 100, 140, 150, 160, 170, and 171.

III. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C 553(b)), an agency may waive the normal notice and comments requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The NRC finds that notice and comment for these amendments are unnecessary and contrary to the public interest because it will have no substantive impact, are technical in nature, and relate only to management, organization, procedure, and practice. The Commission is exercising its authority under 5 U.S.C. 553(b)(3)(B) to publish these amendments as a final rule. The amendments are effective August 6, 2012. These amendments do not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on the revisions listed above because these revisions are administrative in nature and do not change substantive requirements under the regulations. Specifically, the revisions are of the following types: corrections to cross-references where the cross-reference is now incorrect due to changes in the regulations; typographical and grammatical corrections; nomenclature changes that do not affect any requirements under the regulations; revisions to titles and office re-designations; address changes; revision to the OMB-approved list of information collections; revisions to table entries and footnotes for consistency; insertion of language that had been unintentionally deleted during the most recent revisions; and other minor changes in wording that do not change the substantive requirements for clarity and consistency. These corrections will reduce confusion among any person or entity regulated by the NRC, and therefore notice and comment is unnecessary.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2), which excludes from a major action rules which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

VII. Backfit Analysis

The NRC has determined that the administrative changes in the final rule do not constitute backfitting, and therefore a backfit analysis is not included. The revisions are administrative in nature, including typographical corrections and updates to references and authorities. They impose no new requirements and make

no substantive changes to the regulations. The revisions do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of the rule in final form would not constitute backfitting. Therefore, a backfit analysis was not prepared.

List of Subjects

10 CFR Part 1

Organization and functions (government agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 4

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal aid programs, Grant programs, Individuals with disabilities, Loan programs, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 7

Advisory committees, Sunshine Act.

10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

10 CFR Part 12

Adversary adjudications, Award, Equal Access to Justice Act, Final disposition, Net worth, Party.

10 CFR Part 13

Claims, Fraud, Organization and functions (government agencies), Penalties.

10 CFR Part 14

Administrative practice and procedure, Tort claims.

10 CFR Part 15

Administrative practice and procedure, Debt collection.

10 CFR Part 16

Administrative practice and procedure, Debt collection.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 33

Byproduct material, Criminal penalties, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 36

Byproduct material, Criminal penalties, Nuclear materials, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information,

Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive waste treatment and disposal, Low-Level Waste Policy Amendments Act of 1985, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Hazardous materials transportation, Nuclear materials, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 81

Administrative practice and procedure, Inventions and patents.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 100

Nuclear power plants and reactors, Reactor siting criteria.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

10 CFR Part 160

Federal buildings and facilities, Penalties, Security measures.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 2, 4, 7, 9, 10, 12, 13, 14, 15, 16, 19, 20, 21, 26, 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 51, 52, 54, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 81, 95, 100, 140, 150, 160, 170, and 171.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Atomic Energy Act secs. 23, 29, 161, 191 (42 U.S.C. 2033, 2039, 2201, 2241); Energy Reorganization Act secs. 201, 203, 204, 205, 209 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

■ 2. In § 1.5, revise paragraph (b)(1) to read as follows:

§ 1.5 Location of principal offices and regional offices.

* * * * *

(b) * * *

(1) Region I, U.S. NRC, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713.

* * * * *

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 3. Revise the authority citation for part 2 to read as follows:

Authority: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, as amended by section 3100(s), Pub. L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; Atomic Energy Act sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239).

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

■ 4. Revise the authority citation for part 4 to read as follows:

Authority: Atomic Energy Act secs. 161, 223, 234, 274 (42 U.S.C. 2201, 2273, 2282, 2021); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note), Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*

Subpart A also issued under Civil Rights Act secs. 602–605 (42 U.S.C.–2000d–7); Energy Reorganization Act sec. 401 (42 U.S.C. 5891).

Subpart B also issued under Rehabilitation Act Amendments of 1973 sec. 504 (29 U.S.C. 706); secs. 119, 122, Pub. L. 95–602 (29 U.S.C. 794, 706(6)).

Subpart C also issued under Title III of Age Discrimination Act (42 U.S.C. 6101).

Subpart E also issued under Rehabilitation Act Amendments of 1973, 29 U.S.C. 794.

■ 5. Amend part 4 as follows:

■ a. Wherever it appears, remove the word "handicapped" and add, in its place, the word "disabled";

■ b. Wherever it appears, remove the word "Handicapped" and add, in its place, the word "Disabled";

■ c. Wherever it appears, remove the word "handicap" and add, in its place, the word "disability"; and

■ d. Wherever it appears, remove the word "Handicap" and add, in its place, the word "Disability".

PART 7—ADVISORY COMMITTEES

■ 6. Revise the authority citation for part 7 to read as follows:

Authority: Atomic Energy Act sec. 161 (42 U.S.C. 2201); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); 5 U.S.C. App.

PART 9—PUBLIC RECORDS

■ 7. Revise the authority citation for part 9 to read as follows:

Authority: Atomic Energy Act sec. 161 (42 U.S.C. 2201); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C 9701.

Subpart B is also issued under 5 U.S.C. 552a.

Subpart C is also issued under 5 U.S.C. 552b.

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

■ 8. Revise the authority citation for part 10 to read as follows:

Authority: Atomic Energy Act secs. 145, 161 (42 U.S.C. 2165, 2201); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); E.O. 10450, 3 CFR parts 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR Parts 1959–1963 Comp., p. 398, as amended; E.O. 12968, 3 CFR 1995 Comp., p. 396.

■ 9. In part 10, wherever they appear, remove the words "Deputy Executive Director for Information Services and Administration" and add, in their place, the words "Deputy Executive Director for Corporate Management."

PART 12—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

■ 10. Revise the authority citation for part 12 to read as follows:

Authority: Equal Access to Justice Act sec. 203(a)(1) (5 U.S.C. 504 (c)(1)).

PART 13—PROGRAM FRAUD CIVIL REMEDIES

■ 11. Revise the authority citation for part 13 to read as follows:

Authority: Omnibus Reconciliation Act of 1986, secs. 6101–6104 (31 U.S.C. 3801–3812); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Sections 13.13(a) and (b) also issued under Pub. L. 101–410, as amended by section 31001(s), Pub. L. 104–134, (28 U.S.C. 2461 note).

PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

■ 12. Revise the authority citation for part 14 to read as follows:

Authority: Federal Tort Claims Act (28 U.S.C. 2672, 2679); Government Paperwork Elimination Act sec. 161 (42 U.S.C. 2201); 28 CFR 14.11.

PART 15—DEBT COLLECTION PROCEDURES

■ 13. Revise the authority citation for part 15 to read as follows:

Authority: Atomic Energy Act secs. 161, 186 (42 U.S.C. 2201, 2236); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); sec. 1, Pub. L. 97–258 (31 U.S.C. 3713); sec. 5, Pub. L. 89–508, (31 U.S.C. 3716); Pub. L. 97–365 (31 U.S.C. 3719); Federal Claims Collection Standards, 31 CFR Chapter IX, parts 900–904; 31 U.S.C. 3701, 3716; 31 CFR Sec. 285; 26 U.S.C. sec. 6402(d); 31 U.S.C. 3720A; 26 U.S.C. 6402(c); 42 U.S.C. 664; Pub. L. 104–134, as amended (31 U.S.C. 3713); 5 U.S.C. 5514; E.O. 12146 (3 CFR, 1980 Comp. pp. 409–412); E.O. 12988 (3 CFR, 1996 Comp., pp. 157–163); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

PART 16—SALARY OFFSET PROCEDURES FOR COLLECTING DEBTS OWED BY FEDERAL EMPLOYEES TO THE FEDERAL GOVERNMENT

■ 14. Revise the authority citation for part 16 to read as follows:

Authority: Atomic Energy Act sec. 161 (42 U.S.C. 2201), Energy Reorganization Act sec. 201 (42 U.S.C. 5841); sec. 3, Pub. L. 89–508 (31 U.S.C. 3711, 3717, 3718); sec. 5. Pub. L. 89–508 (31 U.S.C. 3716), Debt Collection Act of 1982, Pub. L. 97–365, 96 Stat. 1749–1758; Federal Claims Collection Standards, 4 CFR parts 101–105; 5 U.S.C. 5514, as amended; 5 CFR 550.1101–550.1108.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

■ 15. Revise the authority citation for part 19 to read as follows:

Authority: Atomic Energy Act secs. 53, 63, 81, 103, 104, 161, 186, 234, 1701 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); Energy Reorganization Act secs. 201, 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5841, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 19.32 is also issued under Energy Reorganization Act sec. 401 (42 U.S.C. 5891).

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 16. Revise the authority citation for part 20 to read as follows:

Authority: Atomic Energy Act secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2273, 2282, 2297f). Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846);

Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 549 (2005) (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 17. In § 20.1009, revise paragraph (b) to read as follows:

§ 20.1009 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1003, 20.1101, 20.1202, 20.1203, 20.1204, 20.1206, 20.1208, 20.1301, 20.1302, 20.1403, 20.1404, 20.1406, 20.1501, 20.1601, 20.1703, 20.1901, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2005, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2207, 20.2301, and appendix G to this part.

* * * * *

■ 18. In appendix D to part 20, revise the entry for Region I, to read as follows:

Appendix D to Part 20—United States Nuclear Regulatory Commission Regional Offices

	Address	Telephone (24-hour)	E-Mail
*	*	*	*
Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.	USNRC, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713.	(610) 337–5000, (800) 432–1156 TDD: (301) 415–5575.	*RidsRgn1MailCenter@nrc.gov.*
*	*	*	*

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

■ 19. Revise the authority citation for part 21 to read as follows:

Authority: Atomic Energy Act secs. 161, 223, 234, 1701 (42 U.S.C. 2201, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 206 (42 U.S.C. 5841, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 21.2 also issued under Nuclear Waste Policy Act sec. 135 (42 U.S.C. 10155, 10161).

PART 26—FITNESS FOR DUTY PROGRAMS

■ 20. Revise the authority citation for part 26 to read as follows:

Authority: Atomic Energy Act secs. 53, 81, 103, 104, 107, 161, 223, 234, 1701 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 21. Revise the authority citation for part 30 to read as follows:

Authority: Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 22. In § 30.6, paragraph (b)(2)(i), revise the second sentence, and in paragraph (b)(2)(ii), revise the second sentence to read as follows:

§ 30.6 Communications.

* * * * *

(b) * * *

(2) * * *

(i) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713; where email is appropriate it should be addressed to *RidsRgn1MailCenter.Resource@nrc.gov.*

(ii) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713; where email is appropriate it should be addressed to *RidsRgn1MailCenter.Resource@nrc.gov.*

* * * * *

§ 30.34 [Amended]

■ 23. In § 30.34, paragraph (h)(1)(ii), remove the reference "11 U.S.C. 101(14)" and add, in its place, the reference "11 U.S.C. 101(15)."

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

■ 24. Revise the authority citation for part 31 to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 183, 223, 234 (42 U.S.C. 2111, 2201, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 25. Revise the authority citation for part 32 to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

■ 26. Revise the authority citation for part 33 to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

■ 27. Revise the authority citation for part 34 to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Atomic Energy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 34.45 also issued under Energy Reorganization Act sec. 206 (42 U.S.C. 5846).

■ 28. In § 34.20, paragraph (a)(1), revise the third sentence to read as follows:

§ 34.20 Performance requirements for industrial radiography equipment.

* * * * *

(a)(1) * * * This publication may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, New York 10036; Telephone: (212) 642–4900.* * *

* * * * *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 29. Revise the authority citation for part 35 to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201, 206 (42 U.S.C. 5841, 5842, 5846); sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

■ 30. Revise the authority citation for part 36 to read as follows:

Authority: Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Atomic Energy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

■ 31. Revise the authority citation for part 39 to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 32. Revise the authority citation for part 40 to read as follows:

Authority: Atomic Energy Act secs. 11(e)(2), 62, 63, 64, 65, 81, 161, 181, 182, 183, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2231, 2232, 2233, 2236, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 40.31(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 40.46 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 40.71 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 33. In § 40.5. paragraph (b)(2)(i), revise the second sentence, and in paragraph (b)(2)(ii), revise the second sentence to read as follows:

§ 40.5 Communications.

* * * * *

(b) * * *

(2) * * *

(i) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713; where email is appropriate it should be addressed to *RidsRgn1MailCenter.Resource@nrc.gov.*

(ii) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713; where email is appropriate it should be addressed to *RidsRgn1MailCenter.Resource@nrc.gov.*

* * * * *

■ 34. In § 40.8, add paragraph (c)(6) to read as follows:

§ 40.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(5) * * *

(6) In §§ 40.25 and 40.35, NRC Form 244 is approved under control number 3150–0031.

■ 35. In appendix A to part 40, section I, revise Criterion 4(d), eighth paragraph, and Criterion 8A, third sentence, to read as follows:

Appendix A to Part 40—Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content

* * * * *

I. * * *

Criterion 4. * * *

(d) * * *

Rock covering of slopes may be unnecessary where top covers are very thick (on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10 h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and, there is negligible drainage catchment area upstream of the pile and good wind protection as described in points (a) and (b) of this Criterion.

* * * * *

Criterion 8A. * * * The appropriate NRC regional office as indicated in appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, must be immediately notified of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or of any unusual conditions (conditions not contemplated in the design of the retention system) that if not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 36. Revise the authority citation for part 50 to read as follows:

Authority: Atomic Energy Act secs. 102, 103, 104, 105, 147, 149, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2135, 2167, 2169, 2201, 2231, 2232,

2233, 2236, 2239, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Nuclear Waste Policy Act sec. 306 (42 U.S.C. 10226); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–53, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 50.10 also issued under Atomic Energy Act secs. 101, 185 (42 U.S.C. 2131, 2235); National Environmental Policy Act sec. 102 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under Atomic Energy Act sec. 185 (42 U.S.C. 2235). Appendix Q also issued under National Environmental Policy Act sec. 102 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415 (42 U.S.C. 2239). Section 50.78 also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234).

■ 37. In § 50.8, revise paragraph (b) to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.61a, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.69, 50.70, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, 50.150, and appendices A, B, E, G, H, I, J, K, M, N,O, Q, R, and S to this part.

* * * * *

Appendix R to Part 50—[Amended]

■ 38. In appendix R to part 50, section III, paragraph G.3, first sentence, remove the words "Alternative of dedicated" and add, in their place, the words "Alternative or dedicated."

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 39. Revise the authority citation for part 51 to read as follows:

Authority: Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub. L. 95–604, Title II, 92 Stat. 3033–3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 40. In § 51.121, revise paragraph (d) to read as follows:

§ 51.121 Status of NEPA actions.

* * * * *

(d) *Rulemaking:* ATTN: Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (800) 368–5642.

* * * * *

§ 51.122 [Amended]

■ 41. In § 51.122, wherever it appears, remove the title for the "Office of Information Resources Management" and add, in its place, the title "Office of Information Services."

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 42. Revise the authority citation for part 52 to read as follows:

Authority: Atomic Energy Act secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2201, 2167, 2169, 2232, 2233, 2235, 2236, 2239, 2282); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

■ 43. Revise the authority citation for part 54 to read as follows:

Authority: Atomic Energy Act secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act secs 201, 202, 206 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 54.17 also issued under E.O.12829, 3 CFR, 1993 Comp., p. 570; E.O. 13526, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

PART 55—OPERATORS' LICENSES

■ 44. Revise the authority citation for part 55 to read as follows:

Authority: Atomic Energy Act secs. 107, 161, 181, 182, 68 Stat. 939, 948, 953, 223, 234 (42 U.S.C. 2137, 2201, 2231, 2232, 2273, 2282); Energy Reorganization Act secs. 201, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Sections 55.41, 55.43, 55.45, and 55.59 also issued under Nuclear Waste Policy Act sec. 306 (42 U.S.C. 10226).

Section 55.61 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237).

■ 45. In § 55.5, paragraph (b)(2)(i), revise the second sentence to read as follows:

§ 55.5 Communications.

* * * * *

(b) * * *

(2) * * *

(i) * * * Submissions by mail or hand delivery must be addressed to the Administrator at U.S. Nuclear Regulatory Commission, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713; where email is appropriate it should be addressed to *RidsRgn1MailCenter.Resource@nrc.gov.*

* * * * *

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

■ 46. Revise the authority citation for part 60 to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 223, 234 (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206, 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5841, 5842, 5846, 5851); sec. 14, Pub. L. 95–601 (42 U.S.C. 2021a); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 114, 117, 121 (42 U.S.C. 10134, 10137, 10141); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 47. Revise the authority citation for part 61 to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 65, 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846), sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Pub. L. 95–601, sec. 10, 14, 92 Stat. 2951, 2953 (42 U.S.C. 2021a, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

■ 48. Revise the authority citation for part 62 to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 274 (42 U.S.C. 2111, 2201, 2021); Energy Reorganization Act secs. 201, 209 (42 U.S.C. 5841, 5849); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

■ 49. Revise the authority citation for part 63 to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); sec 14, Pub. L. 95–601 (42 U.S.C. 2021a); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 114, 117, 121 (42 U.S.C. 10134, 10137, 10141); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 50. Revise the authority citation for part 70 to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 161, 182, 183, 193, 223, 234 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2243, 2273, 2282, 2297f); secs. 201, 202, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)). Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237). Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

■ 51. In § 70.5, paragraph (b)(2)(i), revise the second sentence to read as follows:

§ 70.5 Communications.

* * * * *

(b) * * *

(2) * * *

(i) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713; where email is appropriate it should be addressed to *RidsRgn1MailCenter.Resource@nrc.gov.*

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

■ 52. Revise the authority citation for part 71 to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act sec. 180 (42 U.S.C. 10175); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

■ 53. In appendix A to part 71, Table A–1, revise the entries for Bi-205, Cm-248, Eu-150 (long lived), Te-132 (a), and footnote b to read as follows:

* * * * *

TABLE A–1—A_1 AND A_2 VALUES FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)[b]	A_2 (TBq)	A_2 (Ci)[b]	Specific activity (TBq/g)	Specific activity (Ci/g)
Bi-205	Bismuth (83)	7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	1.5×10^{3}	4.2×10^{4}
Cm-248		2.0×10^{-2}	5.4×10^{-1}	3.0×10^{-4}	8.1×10^{-3}	1.6×10^{-4}	4.2×10^{-3}
Eu-150 (long lived)		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	6.1×10^{4}	1.6×10^{6}
Te-132 (a)		5.0×10^{-1}	1.4×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.1×10^{4}	3.0×10^{5}

[b] The values of A_1 and A_2 in Curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq) (see Appendix A to part 71—Determination of A_1 and A_2, Section I).

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 54. Revise the authority citation for part 72 to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act sec. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141 148 (42 U.S.C. 10151, 10152, 10153, 10155,

10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under secs. Nuclear Waste Policy Act 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)). Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)). Subpart K is also issued under sec. 218(a) (42 U.S.C. 10198).

■ 55. In § 72.9, revise paragraph (b) to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70, through 72.80, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.103, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, 72.248.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 56. Revise the authority citation for part 73 to read as follows:

Authority: Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 57. In § 73.8, revise paragraph (b) to read as follows:

§ 73.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.20, 73.21, 73.23, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and appendices B, C, and G to this part.

* * * * *

■ 58. Amend § 73.55 as follows:

■ a. In paragraph (c)(4), remove the words "appendix B, to this part, "General Criteria for Security Personnel,"" and add, in their place, the words "appendix B, section VI, to this part, "Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties,"";

■ b. In paragraph (c)(5), remove the words "appendix C, to this part, "Licensee Safeguards Contingency Plans,"" and add, in their place, the words "appendix C, section II, to this part, "Nuclear Power Plant Safeguards Contingency Plans,"";

■ c. In paragraph (d)(3), first sentence, remove the reference "appendix B" and add, in its place, the reference "appendix B, section VI,";

■ d. Revise paragraph (e)(1)(ii);

■ e. In paragraph (g)(8)(iii), remove the reference "appendix B of this part" and add, in its place, the reference "appendix B, section VI, of this part";

■ f. Revise paragraph (i)(4)(ii)(G);

■ g. In paragraph (k)(8)(ii), remove the words "interdict and neutralize the threat" and add, in their place, the words "interdict and neutralize threats"; and

■ h. Revise paragraphs (m)(2), (m)(3), and (n)(1)(v).

The revisions read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(e) * * *

(1) * * *

(ii) Describe in the physical security plan, physical barriers, barrier systems, and their functions within the physical protection program.

* * * * *

(i) * * *

(4) * * *

(ii) * * *

(G) Ensure that operators in both alarm stations are knowledgeable of the final disposition of all alarms.

* * * * *

(m) * * *

(2) Reviews of the security program must include, but not limited to, an audit of the effectiveness of the physical security program, security plans, implementing procedures, cyber security programs, safety/security interface activities, the testing, maintenance, and calibration program, and response commitments by local, State, and Federal law enforcement authorities.

(3) The results and recommendations of the onsite physical protection program reviews, management's findings regarding program effectiveness, and any actions taken as a result of recommendations from prior program reviews, must be documented in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for day-to-day plant operations. These reports must be maintained in an auditable form and available for inspection.

* * * * *

(n) * * *

(1) * * *

(v) Implement compensatory measures that ensure the effectiveness of the onsite physical protection program when there is a failure or degraded operation of security-related components or equipment.

* * * * *

■ 59. Amend § 73.56 as follows:

■ a. In paragraph (h)(4)(i), third sentence, and paragraph (h)(4)(ii)(B), second sentence, remove the word "proceeding" and add, in its place, the word "preceding";

■ b. Revise the paragraph heading for the introductory text of paragraph (h)(4)(ii) and add headings for paragraphs (h)(4)(ii)(A) and (h)(4)(ii)(B); and

■ c. Revise paragraph (i)(1)(iv), the first sentence.

The revisions read as follows:

§ 73.56 Personnel access authorization requirements for nuclear power plants.

* * * * *

(h) * * *

(4) * * *

(ii) *Interruption of unescorted access or unescorted access authorization.*

* * *

(A) *Update of unescorted access or unescorted access authorization.* * * *

(B) *Reinstatement of unescorted access or unescorted access authorization.* * * *

* * * * *

(i) * * *

(1) * * *

(iv) The individual is subject to an annual (within 365 calendar days) supervisory review conducted in accordance with the requirements of the licensee's or applicant's behavioral observation program. * * *

* * * * *

60. In appendix A to part 73, revise the entry for Region I to read as follows:

Appendix A to Part 73—U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses

	Address	Telephone (24 hour)	E-Mail
Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont..	USNRC, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713.	(610) 337–5000, (800) 432–1156 TDD: (301) 415–5575.	*RidsRgn1MailCenter@nrc.gov*

Appendix B to Part 73—[Amended]

■ 61. Amend appendix B, section VI, as follows:
■ a. In paragraph C.3(k)(3), remove the word "though" and add, in its place, the word "through";
■ b. In paragraph H.1, remove the reference "§ 73.55(r)" and add, in its place, the reference "§ 73.55(q)"; and
■ c. In paragraph I., remove the reference "§ 73.55(n)" and add, in its place, the reference "§ 73.55(m)."

Appendix C to Part 73—[Amended]

■ 62. Amend appendix C as follows:
■ a. In section I, introductory text, remove the word "Licensee" and add, in its place, the word "Licensees";
■ b. In section II, paragraph A.(4), last paragraph, remove the reference "appendix B of this part, General Criteria for Security Personnel" and add, in its place, the reference "appendix B, section VI of this part, Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties";
■ c. In section II, paragraphs B.3.c.(i) and B.3.c.(v)(4), remove the words "defense in depth" and add in its place the word "defense-in-depth";
■ d. In section II, paragraph B.3.c.(iii) remove the phrase "training and qualification plans,";
■ e. In section II, paragraph B.3.c.(v)(1) remove the phrase "performance objectives of § 73.55(a) through (k)" and add, in its place, the reference "performance requirements and objectives of § 73.55(a) through (k)";
■ f. In section II, paragraph C.1, remove the reference "§ 73.55(n)" and add, in its place, the reference "§ 73.55(m)"; and
■ g. In section II, paragraph C.3, remove the reference "§ 73.55" and add, in its place, the reference "§ 73.55(q)."

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

■ 63. Revise the authority citation for part 74 to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 161, 182, 183, 223, 234, 1701 (42 U.S.C.2073, 2077, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

■ 64. Revise the authority citation for part 75 to read as follows:

Authority: Atomic Energy Act secs. 53, 63, 103, 104, 122, 161, 223, 234 (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 75.4 also issued under Nuclear Waste Policy Act secs. 135 (42 U.S.C. 10155, 10161).

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

■ 65. Revise the authority citation for part 76 to read as follows:

Authority: Atomic Energy Act secs. 161, 223, 234, 1312, 1701 (42 U.S.C. 2201, 2273, 2282, 2297b–11, 2297f); Energy Reorganization Act secs. 201, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 76.22 is also issued under Atomic Energy Act sec. 193(f) (42 U.S.C. 2243(f)). Section 76.35(j) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).

PART 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

■ 66. Revise the authority citation for part 81 to read as follows:

Authority: Atomic Energy Act secs. 156, 161 (42 U.S.C. 2186, 2201); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 67. Revise the authority citation for part 95 to read as follows:

Authority: Atomic Energy Act secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 3 CFR, 2010 Comp., pp. 298–327; E.O. 12968, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 3 CFR, 2010 Comp., p. 298.

PART 100—REACTOR SITE CRITERIA

■ 68. Revise the authority citation for part 100 to read as follows:

Authority: Atomic Energy Act secs. 103, 104, 161, 182 (42 U.S.C. 2133, 2134, 2201, 2232); Energy Reorganization Act secs. 201, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 69. Revise the authority citation for part 140 to read as follows:

Authority: Atomic Energy Act secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act secs. 201, as amended, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 70. Revise the authority citation for part 150 to read as follows:

Authority: Atomic Energy Act secs. 161, 181, 223, 234 (42 U.S.C. 2201, 2021, 2231, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork

Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under Atomic Energy Act secs. 11e(2), 81, 83, 84 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under Atomic Energy Act sec. 53 (42 U.S.C. 2073).

Section 150.15 also issued under Nuclear Waste Policy Act sec. 135 (42 U.S.C. 10155, 10161). Section 150.17a also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 150.30 also issued under Atomic Energy Act sec. 234 (42 U.S.C. 2282).

PART 160—TRESPASSING ON COMMISSION PROPERTY

■ 71. Revise the authority citation for part 160 to read as follows:

Authority: Atomic Energy Act secs. 161, 229, 223, 234 (42 U.S.C. 2201, 2278a, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841).

PART 170—FEES FOR FACILITIES, MATERIALS IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 72. Revise the authority citation for part 170 to read as follows:

Authority: Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act sec. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58,119 Stat. 783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 73. Revise the authority citation for part 171 to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 6101 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203 as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

Dated at Rockville, Maryland, this 27th day of June 2012.

For the Nuclear Regulatory Commission.

Cindy Bladey,

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

[FR Doc. 2012–16176 Filed 7–5–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2010–0302; Amdt. No. 93–97]

RIN 2120–AJ75

The New York North Shore Helicopter Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action requires helicopter pilots to use the New York North Shore Helicopter Route when operating along the north shore of Long Island, New York. The North Shore Helicopter Route was added to the New York Helicopter Route Chart in 2008 and prior to this action, its use has been voluntary. The purpose of this rule is to protect and enhance public welfare by maximizing utilization of the existing route flown by helicopter traffic one mile off the north shore of Long Island and thereby reducing helicopter overflights and attendant noise disturbance over nearby communities. This rule will lapse in 2 years unless the FAA determines that a permanent rule is merited.

DATES: Effective August 6, 2012 through August 6, 2014.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How To Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact Gary A. Norek, Airspace, Regulations and ATC Procedures Group, AJV–11, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8783. For legal questions concerning this rule contact Rebecca MacPherson, AGC–200, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–3073.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA has broad authority and responsibility to regulate the operation of aircraft, the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (49 U.S.C. 40104 *et seq.*, 40103(b)). The FAA's authority for this rule is contained in 49 U.S.C. 40103 and 44715. Under section 40103, the Administrator of the FAA has authority to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for * * * (B) protecting individuals and property on the ground. (49 U.S.C. 40103(b)(2)). In addition, section 44715(a), provides that to "relieve and protect the public health and welfare from aircraft noise," the Administrator of the FAA, "as he deems necessary, shall prescribe * * * (ii) regulations to control and abate aircraft noise * * *"

I. Executive Summary

In response to continued concerns from a large number of local residents who are disturbed by the level of noise from helicopters operating over Long Island, the FAA adopts this final rule, as proposed, to require helicopter pilots whose route of flight takes them over the north shore of Long Island to fly the North Shore Helicopter Route. This route is based on a voluntary route that the FAA established in 2008. The route is published on the New York Helicopter Route Chart. This rule also provides that when necessary for safety, weather, or when transitioning to or from a point of landing, a pilot may deviate from the published altitudes and routes. This action is part of an on-going process to enhance public health and welfare by reducing helicopter noise for residents along the north shore of Long Island.

The FAA believes this rule is justified for several reasons. Maximizing the utilization of the existing route by making it mandatory is expected to help to further decrease levels of noise that have already been voluntarily achieved. Because the route is approximately one mile off the northern shore of Long Island and away from the residential communities on Long Island that are the source of hundreds of comments supporting the rule, it should not in itself cause any environmental harm. Other than necessary deviations or transitions, the noise from the helicopters would be over water, and there is no evidence of any significant

effect of the rule on water quality, ecological resources, or other aspects of the environment.

The rule fully addresses any safety concerns by beginning the route at a point that minimizes interaction with LaGuardia's airport traffic, and allowing deviations at the pilot's discretion for safety and weather concerns.

Since the extra distance traveled is relatively minor to get to and return from the approximately one-mile offshore route, the costs for fuel and extra time would also be minimal. In addition, no new equipment is required.

The FAA has noted five circumstances, the combination of which is likely unique to Long Island, that support using our statutory authority to move forward with a final rule.

1. Because Long Island is surrounded by water, it was possible to develop a route that took helicopters a short distance off the shoreline. Thus, the North Shore Helicopter Route does not adversely affect other communities and operators can use the route without significant additional costs.

2. There are disproportionately more multi-engine helicopters flying in Long Island than the national averages (approximately 65% versus 10–15% nationally.) This allows for greater use of the off-shore route.

3. There are visual waypoints along the route that allow pilots to fly along the route with no additional equipment during good weather.

4. The helicopter traffic along the north shore of Long Island is largely homogenous, in that it is primarily point-to-point transit between New York City and the residential communities along the northern and eastern shores of Long Island.

5. The population corridor along the north shore of Long Island is significant, and coupled with the number of airports/heliports on the island, the FAA found it reasonable to develop a route to mitigate noise impacts.

Since a voluntary route already exists, the only available remaining option to further abate this noise problem is to make the route mandatory to the extent consistent with aviation safety. In light of the minimal costs imposed and the substantial number and volume of complaints, the FAA finds that this rule is justified. However; the FAA recognizes that there may already be a high rate of compliance with the voluntary route and that it is imprudent to mandate that all helicopters follow the route under all circumstances. Accordingly, it is possible that the actual rates of compliance may not improve significantly or that noise levels that are currently dispersed may inadvertently be concentrated as a result of the rule. Consequently, the FAA has decided to sunset the rule in 2 years in the event the agency concludes that the rule does not reduce or alleviate noise concerns or is otherwise unjustified. During the time that the rule is in effect, the FAA will continue to review and monitor the implementation of this rule and work with stakeholders to ensure that the rule addresses the problem and is otherwise justified; if not, the FAA will allow the rule to lapse at the end of 2 years. Alternatively, the FAA may amend the rule to implement meaningful changes should they be identified.

II. Background

A. Statement of the Problem

Helicopter traffic between New York City and eastern Long Island has traditionally followed one of three paths. The helicopters fly along the north shore of Long Island and then travel to the south to the intended destination; they travel across the middle of the island along the Long Island Expressway until branching off to the destination; or they travel along the south shore of Long Island and then turn inland to the final destination. Many of the helicopters take off or land in the Hamptons. There are two airports and a helipad that service the Hamptons. Other operators take off or land at one of the many other airports or heliports throughout the island. There are no airports and very few heliports along the north shore of Long Island. Accordingly, one might think that operators would prefer to travel along the south shore or along the Long Island Expressway. In fact, many operators prefer to travel along the north shore of Long Island and then travel inland to the desired landing spot. This is because this is a faster route and because at some locations, most notably the Hamptons, weather delays are common for aircraft approaching from the south.

In October 2007, Senator Charles Schumer and Representative Tim Bishop conducted a meeting with the FAA, local helicopter operators and airport proprietors to specifically address noise complaints stemming from helicopter operations along the north shore of Long Island. As a result of this meeting, the FAA designed a visual flight rules (VFR) helicopter route, the North Shore Helicopter Route, for helicopters to use when transiting the area that would reduce the noise impact of helicopter traffic on populated areas by having these operations offshore.

The FAA published the route on the Helicopter Route Chart for New York, effective May 8, 2008. Subsequently, New York public officials advised the FAA that they continue to receive noise complaints in this area even with the voluntary North Shore Helicopter Route in place. The local FAA Flight Standards District Office has also received similar complaints.

Uniqueness of the Situation

There are a number of unique characteristics that, taken together, made development of an alternative over-water route along the north shore of Long Island appropriate and feasible and consistent with the FAA's safety mandate. First, because Long Island is surrounded by water, it was possible to develop a route that took helicopters a short distance off the shoreline. Thus, the North Shore Helicopter Route does not negatively impact other communities, and operators can use the route with minimal additional costs. Second, the fleet mix in Long Island consists of significantly more multi-engine helicopters than the national mix, allowing more operators to use the route. There are limits on the distance certain helicopters can prudently operate from shore without being equipped for overwater operation. Unlike fixed wing aircraft, helicopters are not able to glide in the event of total loss of power for any significant distance. Thus, pilots of single-engine rotorcraft not equipped for overwater operation need to operate close to shore so they can land safely in the event of a loss of power. Nationally, the vast majority (roughly between 85 and 90 percent) [1] of helicopters have only one engine. However, the FAA believes that about two-thirds of commercial helicopters flying from New York City to Long Island are multi-engine helicopters, while about one-third of the helicopters being used for this purpose have only one engine.[2] Thus, the need to stay close to land is less of an issue along the North Shore than it would be in other areas of the country where the number of single-engine helicopters is significantly greater. This highly

[1] A review of the Registry database indicated that approximately 90 percent of all registered helicopters have a single-engine. A review of the 2010 GA survey indicated that approximately 85 percent of the active helicopter population is single-engine. The discrepancies in the two data sets are a function of filters in the survey that are designed to focus on helicopters that are actively flown.

[2] See Eastern Region Helicopter Council Operations Analysis—Suffolk County, Memorial Day Weekend 2010, June 23, 2010, Docket No. FAA–2010–0302–0898.

unusual situation allows us to implement an inexpensive alternative that should effectively and safely address the considerable complaints. Third, there are visual waypoints along the route that allow pilots to fly along the route with no additional equipment during good weather. While many pilots use Global Positioning System (GPS) coordinates to track a portion of the route, they are not required to do so. Fourth, the helicopter traffic along the north shore of Long Island is largely homogenous, in that it is primarily point-to-point transit between New York City and the residential communities along the northern and eastern shores of Long Island. Unlike helicopter traffic in urban areas, where the destination points and reasons for using a helicopter diverge widely (e.g., news reporting, aerial traffic updates, as well as point-to-point transit), the nature of helicopter traffic over and along the North Shore lends itself to the development of a single route that could be used consistently. Finally, the population corridor along the north shore of Long Island is significant, and coupled with the number of airports/heliports on the island, the FAA found it reasonable to develop a route to mitigate noise impacts.

Safety Implications

In developing this route, the FAA considered the potential safety implications associated with helicopters flying in VFR conditions off the coastline and the interaction with other traffic at or above the specified minimum altitude. The route begins approximately 20 miles northeast of LaGuardia in order to minimize interaction of the traffic operating to or from that airport.

Community Involvement

The FAA, airport sponsors, state and local government, aircraft operators, and local communities all have a role to play in reducing aircraft noise. Community noise concerns about aircraft overflights are uniquely local in nature and are best resolved in a voluntary manner, at the local level, and with the participation of all affected parties. In this instance, local participation was crucial to the development of the voluntary route. Based on the number of complaints and public comments to the proposed rule, the local effort, while successful in many regards, has not fully resolved community annoyance with helicopters flying over homes in northern Long Island.

The FAA's experience with aircraft noise has shown that community flight path preferences vary significantly; some communities prefer to concentrate noise over a particular area while others prefer to disperse the flight paths so that individual neighborhoods experience less noise overall. Thus, the FAA's policy is to respond to requests for noise abatement flight procedural changes from airport sponsors and to encourage the development of such proposals through the FAA's Airport Noise Compatibility Program established under the Aviation Safety and Noise Abatement Act of 1979.

Future Technology

While helicopter noise appears to have recently roused the greatest number of noise complaints, over time helicopters will incorporate better technology and become less noisy. The FAA is developing rules to impose more stringent noise standards for all new rotorcraft models being certificated. As these quieter aircraft are built and incorporated into the fleet, noise levels associated with helicopter operations should correspondingly decrease.[3]

However, these standards are not yet in place. Given the existence of a voluntary route that reduces noise to some extent, the only available remaining option to further abate this noise problem is to require utilization of the route to the extent consistent with aviation safety.

B. Summary of the NPRM

On May 3, 2010, the FAA published the NPRM entitled "The New York North Shore Helicopter Route" (75 FR 29471). The FAA proposed requiring civil helicopters operating along Long Island, New York's northern shoreline to utilize the published New York North Shore Helicopter Route between the fixed waypoint Visual Point Lloyd Harbor (VPLYD) and Orient Point. Specifically, the mandatory portion of the route begins at a waypoint 20 miles northeast of LaGuardia Airport (LGA) and near Huntington, NY; remains approximately one mile offshore, extends to the eastern end of Long Island; and terminates at Orient Point, near the eastern edge of Long Island. Helicopters operating on this route would have to remain at or above 2,500 feet mean sea level (MSL). The proposal contemplated helicopter pilots would deviate from the puhlished altitude and route under several conditions. The conditions take into consideration the wide variety of helicopters, their associated performance and mission profiles, the dynamic weather environment along the route, and the pilot's responsibility to conduct safe operations at all times. The proposal also contemplated allowing operators to deviate from the route in order to reach their final destination.[4] The comment period closed on June 25, 2010.

C. General Overview of Comments

The FAA received approximately 900 comments. Many comments were from residents, local government, citizen groups, and businesses. Slightly more than a third of the total number of commenters complained about the levels of helicopter noise that they are exposed to, particularly during the summer months. The FAA also received numerous comments from individual pilots, many of whom were opposed to the implementation of a mandatory route on principle. In addition, the agency received comments from the Aircraft Owners and Pilots Association (AOPA), the Eastern Region Helicopter Council (ERHC), the General Aviation Manufacturers Association (GAMA), the National Air Transportation Association (NATA), the National Business Aviation Association (NBAA), and United Technologies Corporation (UTC/UTFlight).

The number and tenor of the comments demonstrates affected parties at odds with each other.

On the one hand, the residents along the north shore of Long Island emphatically agreed that helicopter overflights during the summer months are unbearable and negatively impact their quality of life. They opposed any route over communities, even sparsely settled areas, and suggested the route go over the ocean. One commenter noted he had counted over 25 helicopter operations in a 2-hour period. He also said the flights started early in the morning and continued to early evening. Other commenters noted that the helicopter noise interferes with sleep, conversation, and outdoor activities. Still others complained that the helicopters fly so low that their walls vibrated.

On the other hand, helicopter operators and their associations argued that the helicopter noise levels over Long Island are not appreciable, that operators are already largely flying on the voluntary route, and that any mandated route would result in an

[3] Should the FAA decide against allowing the rule to sunset, we may evaluate the affected fleet as the quieter technologies are incorporated into the helicopter fleet as a whole and may reevaluate the continued need for a mandatory route if the majority of affected helicopters have the quieter engines.

[4] While the route extends to Orient Point, it is unlikely that many operators would stay on the route that long because Orient Point is located at the far eastern point of the island, well east of any significant population centers.

unacceptable imposition of cost and safety risk.

The FAA received more specific comments on the following general areas of the proposal:

- Justification for the rule,
- Safety issues,
- Route location,
- Environmental concerns,
- Procedural/miscellaneous, and
- Economic evaluation.

III. Discussion of Public Comments and Final Rule

A. Justification for the Rule

Several commenters alleged that the proposal does not have adequate factual support. Some commenters argued that according to industry measurements, compliance on the voluntary route is very high already and that mandating this route is therefore not necessary. According to data collected by ERHC after the voluntary route was implemented, roughly 85–95 percent of operators observed over multiple holiday weekends comply with the North Shore Helicopter Route.[5] ERHC noted that it believes the noise complaints are coming from a relatively small number of households. While ERHC can demonstrate that relatively few households call its noise hotline, it cannot demonstrate these individuals are the only ones disturbed by the existing noise levels.

Other commenters stated that the lack of environmental analysis makes it impossible to determine that the rule actually addresses the concerns. ERHC and the Town of East Hampton contended that without such analysis, it is arbitrary and capricious to conclude that the route reduces noise on nearby communities.

As stated earlier, the original reason for establishing the North Shore Helicopter Route was to reduce noise from helicopter flights over communities along the north shore of Long Island by moving those flights offshore and establishing a minimum altitude. Because the route applies only to VFR flights, the FAA cannot definitively determine its current level of use. Even assuming the level of use is high, as alleged by the commenters, it is neither arbitrary nor capricious for the FAA to conclude, even without a specific noise analysis, that increasing use of the route by making it mandatory will further reduce noise impacts from helicopters operating along the north shore of Long Island. ERHC's contention that only a small number of households object to the helicopter noise levels is called into question by the hundreds of comments the FAA received supporting the mandatory use of the offshore route and the complaints filed with local government and FAA.

No one contends that pilots are using the route 100 percent of the time, and the FAA cannot determine how long operators fly along the route (either geographically or at the specified altitudes) when they do use it. While the final rule allows operators to deviate from the route for safety (including adverse weather) or to reach their destination, the FAA is unable to determine whether operators are currently deviating for other reasons. However, based on comments to the NPRM and the continued concerns expressed by the residents' elected officials, the FAA understands that helicopter overflights continue to be a problem for the residents along the north shore of Long Island.

The FAA, with the assistance of the John A. Volpe National Transportation Systems Center (Volpe Center), analyzed data from the Performance Data Analysis and Reporting System (PDARS) to assess the noise of flight operations along the north shore of Long Island.[6] The FAA reviewed helicopter traffic for the Memorial Day and Fourth of July weekends in the summer of 2011. That data indicated that helicopter traffic is greater on the Fridays before the long holiday weekends and on the last day of the holiday weekend than in the interim period. Based on this limited data set, as well as the assertions in the comments that the problem is greater in the summer, it is reasonable to assume that traffic is not evenly distributed throughout the year and on all days of the week. Thus, while overall cumulative noise levels may be low when averaged across the year, helicopter overflights could be more disturbing on certain days when they are experienced several times over a period of several hours or the course of a day. Maximizing the utilization of the existing route by making it mandatory will secure and improve upon the decreased levels of noise that have been voluntarily achieved.

B. Safety Issues

ERHC objected to the over-water route because it places some helicopters beyond the autorotation performance distance needed to reach land in the event of an engine failure or other emergency.

The FAA notes that safety is its highest priority. To the extent a helicopter operator cannot safely fly along the North Shore Helicopter Route, this rule specifically allows for deviation.

The FAA recognizes the varying capabilities of helicopters, and this rule permits pilots to deviate from the rule for safety, weather, or when transitioning to or from a destination or point of landing. Under § 91.3, the pilot in command is directly responsible for and is the final authority as to the operation of that aircraft. Therefore, if flight along this route places a helicopter beyond the autorotation performance distance to the shore and the helicopter is not equipped with flotation devices, such as life jackets or helicopter floats, the pilot is permitted to deviate from the route and altitude.

AOPA stated there is no altitude discrimination between opposite direction helicopter traffic transiting the route. AOPA further stated that the FAA, at a minimum, should provide additional guidance on altitude assignments for opposite direction traffic in order to decrease the risk of a mid-air accident over Long Island.

As an initial matter, the FAA agrees that additional guidance is useful and is developing guidance that will be available before use of the route becomes mandatory. The FAA also acknowledges that opposite direction VFR traffic takes place along this route, but this is not unusual. There already are rules governing rights of way in VFR conditions, and §§ 91.113 and 91.155 are applicable to pilots operating along this route. These rules respectively address right of way rules for converging aircraft, approaching aircraft head on, overtaking aircraft, and the appropriate visibility minimums.

The FAA encourages operators to identify industry best practices and operational procedures for use on the route. The FAA also will develop a voluntary training awareness course for operators, which will include these best practices and emphasize industry's "fly neighborly" program as described on the New York Helicopter Route Chart. Most importantly, this rule provides pilots with the needed flexibility to

[5] The FAA has not been able to independently assess the validity or reliability of these estimates. In any event, the FAA continued to receive noise complaints after implementation of the voluntary route.

[6] The Performance Data Analysis and Reporting System (PDARS) supports the collection, archiving, and reporting of flight plan and radar track data from Air Route Traffic Control Centers, Terminal Radar Approach Control facilities, and Air Traffic Control Towers to manage aviation activity within the National Airspace System (NAS). The PDARS data analyzed by the FAA for this rule represents visual flight rule (VFR) aircraft operating in Class E and G airspace along the northern shoreline of Long Island, New York. The data represent aircraft using a transponder code indicating VFR operation and altitude.

maneuver off the route and/or altitude for weather, safety, or transition to/from a point of landing. FAA guidance on conducting operations subject to this rule will enhance pilot awareness and the safety of flights operating within the vicinity of this route. Should the level of traffic indicate an unacceptable level of safety risk, the FAA may choose to mandate separation standards for east- and westbound traffic in a subsequent rulemaking. Nothing in this rule should be construed as restricting or limiting in any way an air ambulance operator's ability to deviate from this route in order to provide emergency medical services.

ERHC argued that under the current rules, only the New York Helicopter Route Chart and New York Sectional depict the North Shore Helicopter Route, neither of which is required to be carried by pilots operating under VFR. ERHC further argued that the New York Sectional and New York Terminal Area Chart would need to be updated with the mandatory route and would need to be made mandatory for flight. ERHC asserted that the FAA would have to address the charting of the route as well as requirements to carry charts and sectionals, as no such requirements currently exist.

In accordance with § 91.103, the pilot in command is responsible before the beginning of a flight to become familiar with all information concerning the flight. Under this final rule, that responsibility includes being aware of the mandatory route when planning to fly along the north shore of Long Island. Though there is no specific requirement for pilots to carry aeronautical charts, the FAA believes that prudent pilots would carry charts, especially given the complexity and volume of air traffic in the greater New York City metropolitan area. The FAA will issue a notice to airmen (NOTAM) providing the operational requirements of this rule to augment information available to pilots.

Some commenters alleged this route would mix together VFR and instrument flight rules (IFR) aircraft. Portions of the route are located in Class E airspace where both IFR and VFR operations are conducted. However, this is not a unique situation for any Class E airspace area. Existing FAA regulations and air traffic control procedures provide for the safe integration of VFR and IFR operations. VFR pilots are responsible to see and avoid other traffic, which is how they operate today. Again, it must be emphasized that utilizing this route does not exempt pilots from this responsibility.

C. Route Location

This action requires helicopter operators to use the currently published North Shore Helicopter Route when transiting the north shore of Long Island. The mandatory portion of the route begins at VPLYD waypoint located approximately 20 miles northeast of LGA, remains approximately one mile offshore, and extends to the eastern end of Long Island, terminating at Orient Point.

Some commenters stated that the definition of the geographical boundaries of the route is insufficient and difficult to identify visually.

The FAA believes the route is sufficiently defined. A VFR route is to be flown under visual conditions. Pilotage, as defined in 14 CFR 1.1, is an acceptable means by which to conduct operations along the route. Most of the route is located just one mile off the shoreline, which provides adequate visual reference for navigation purposes. The route was developed and designed by the FAA in cooperation with local helicopter operators, many of whom according to ERHC, have been flying this route for several years. The FAA meets regularly with local helicopter operators to discuss safety and noise issues. In the four years since this route was published, the FAA is not aware of any concerns regarding navigating the route.

ERHC asserted proposed airspace changes would lower Class B dimensions and impose higher workloads on air traffic controllers and IFR traffic. ERHC further asserted that since the controllers have no ability to deny VFR operators clearance, the burden would be higher on the air traffic controllers (ATC) and IFR operators. ERHC posited that if the North Shore Helicopter Route falls within the redesigned Class B Airspace, the VFR helicopter operators would further burden ATC controllers as they would be required to receive special VFR (SVFR) clearances whenever weather minimums are less than those prescribed in the Code of Federal Regulations.

The FAA notes that while airspace changes for the New York Class B Airspace area have been under discussion for many years, there are no formal proposals under consideration to date. With respect to the ATC workload, controllers provide services on a first come, first serve basis. If necessary, controllers may direct aircraft to remain clear of the Class B airspace or to standby, or controllers may refuse traffic from other sectors. If weather conditions deteriorate to the point where a pilot requires a SVFR clearance, the same first come first serve basis applies. The FAA notes that fixed wing SVFR operations are currently prohibited in the New York Class B Airspace Area.

Most residents and local government groups supported the over-water location of the route, and moving the helicopter traffic away from their communities by overflying the water. However, numerous commenters expressed opposition to the route, mistakenly believing the route would pass over land and therefore, bring helicopter overflights over their homes and communities. Obviously all helicopter operators planning on landing on Long Island will, at some point, have to fly inland in order to land. Were there no provision to allow operators to leave the route to transit to their destination, the likely impact on a few communities, notably those near VPLYD and Orient Point, would bear the brunt of the noise associated with the majority of helicopters flying over their communities. However, there are nine airports and 16 heliports on Long Island to the east of VPLYD. The noise associated with flying to an airport or other landing site should be dispersed among the affected communities. This is because this final rule allows pilots to deviate from the route for purposes of reaching their destination. The FAA notes that a local news article published during the comment period incorrectly placed the route over land. It is possible that some of the commenters were responding to the incorrect information contained in that news article.

ERHC also objected to the route, stating the route is difficult to navigate, and will require the purchase of helicopter charts and GPS equipment to comply with the regulation.

The NPRM did not propose any changes to the current published route, which is over water. This route was the result of many meetings and consultations between the FAA, local helicopter operators, residents, and elected officials. The FAA and the interested parties selected and agreed on the waypoints that are located near, or parallel to easily seen and identified locations along the shore. For example, VPLYD and VPJAY were chosen because of their proximity to two physically prominent locations (Lloyd Point, situated at the northern most spot on Lloyd Neck, and Old Field Point, a lighthouse location near Port Jefferson, respectively). The FAA designed the route to be over water, as it would prevent helicopter traffic from overflying residential areas. This voluntary route was charted and has been flown by helicopter operators for

several years. The FAA is not aware of any navigational or safety issues associated with the use of this route.

D. Environmental Concerns

Several commenters contended that the FAA has failed to analyze adequately the final rule's environmental consequences, as required by the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.* ERHC alleged that without an adequate description of the proposed route, it is impossible to provide comments on whether there would be extraordinary circumstances that would preclude use of a categorical exclusion to comply with NEPA. ERHC further noted the lack of analysis to determine whether increased noise and operations over the water would affect water quality or ecological resources. Several commenters asserted that the rule would cause noise to concentrate over some communities.

The FAA's analysis of its PDAR data indicates that existing levels of helicopter noise is below levels at which homes are significantly impacted.[7] Beyond making use of the North Shore Helicopter Route mandatory, the rule does not change the existing route, which has been charted and flown by helicopter operators for several years. The rule allows pilots to deviate from the route when transitioning to or from a destination or point of landing, thus avoiding concentrated operations at any particular point of entry or exit along the route. Therefore, it is reasonable to assume that those pilots currently complying with the voluntary route will continue to follow the same flight paths to the extent they have been following them in the past, with the same resulting pattern of noise dispersion among underlying communities.

The FAA does not believe that this rule will create a negative impact on the public welfare. It is possible that compliance with the rule by pilots not currently complying with the voluntary route could result in some additional flights over some communities. However, because of the deviation allowed by the rule, the FAA cannot reliably predict the specific flight paths these pilots will follow on their way to or from the route. As a result, any specific noise impacts of such flight paths are not reasonably foreseeable.

In accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," the FAA has determined that the rule is categorically excluded from environmental review under paragraph 312f of the order, which applies to "regulations * * * (excluding those which if implemented may cause a significant impact on the human environment)." There are no significant noise or emissions impacts, which would be the primary concerns. The FAA determined that there are no extraordinary circumstances that would preclude the applicability of this categorical exclusion, and ERHC does not provide any facts supporting the presence of any such circumstances. Moreover, ERHC does not identify any significant effects the rule would have on water quality, ecological resources, or any other aspect of the environment, and the FAA has no reason to believe that any such effects would occur.

Were the rule to require pilots to follow the route in its entirety without regard to their origin or destination, it would be reasonable to expect an increase in noise in communities near the route's termination points (i.e., the VPLYD waypoint and Orient Point), due to the resulting concentration of operations entering and exiting the route at those locations. However, the rule allows pilots to deviate from the route when transitioning to or from a destination or point of landing. Therefore, it is reasonable to assume that those pilots currently complying with the voluntary route will continue to follow the same flight paths they have been following, with the same resulting pattern of noise dispersion among underlying communities. Compliance with the rule by pilots not currently complying with the voluntary route could result in additional flights over some communities. However, because of the deviation allowed by the rule, the FAA cannot reliably predict the specific flight paths these pilots will follow on their way to or from the route. As a result, any specific noise impacts of such flight paths are not reasonably foreseeable. In any event, based on the number of helicopter operations the ERHC estimates occur along the north shore of Long Island, any noise increase in residential communities from further concentration of those operations would not be significant. This conclusion is further supported by an FAA analysis of radar and flight plan data, a copy of which has been placed in the docket for this rulemaking.

The FAA notes that it is likely noise impacts will be felt most keenly near airports or heliports, as the helicopters descend to land. Nothing in this rule makes that a unique phenomenon. Rather, aircraft noise is typically concentrated near airports, which is why the FAA typically addresses aircraft noise through the Airport Noise Compatibility Program.[8]

Several commenters alleged that the rule would require helicopter operators to fly more miles and therefore burn more fuel, and that this would cause significant environmental impacts. Specifically, ERHC alleged, without supporting documentation,[9] that compliance with the rule would increase average flight time by 10 minutes, resulting in the consumption of nearly 117,000 additional gallons of fuel per year.

As stated above, the rule does not mandate entry or exit points, nor does it require operators to fly any specific route to or from the North Shore Helicopter Route. Therefore, it is not possible to reliably determine the amount of any increase in fuel consumption that might occur as a result of the rule. However, assuming ERHC is correct that average flight time would increase by 10 minutes, the commenter's estimated increase of 117,000 gallons per year would result in air emissions well below levels determined by the U.S. Environmental Protection Agency (EPA) to be *de*

[7] Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The FAA analyzed data from the PDARS. The PDARS supports the collection, archiving, and reporting of flight plan and radar track data from Air Route Traffic Control Centers, Terminal Radar Approach Control facilities, and Air Traffic Control Towers to manage aviation activity within the National Airspace System (NAS). The PDARS data analyzed by the FAA for this rule represents visual flight rule (VFR) aircraft operating in Class E and Class G airspace in the vicinity of the northern shoreline of Long Island, New York. The data represent aircraft using a transponder code indicating VFR operation and altitude. The FAA's analysis modeled noise from approximately 15,600 flight operations, based on an average of 42.8 operations per day over 11 days around Memorial Day and July 4, 2011. The resulting noise levels were below DNL 45 dB. Under federal guidelines, residential land uses are considered compatible with noise levels below DNL 65 dB. 14 CFR part 150, appendix A, Table 1.

[8] Presumably those airports and heliports near larger population centers will receive have more take-offs and landings than the airports and heliports near smaller population centers. But this may not actually be true. It is possible that the airports and heliports near relatively small, but more affluent population centers will handle most of the helicopter traffic.

[9] The FAA is unable to validate the assumptions of ERHC because it is impossible to determine where operators would choose to divert from the route to reach their intended destinations. However, the FAA did evaluate what it believes would be one of the worst case scenarios in terms of additional distance by looking at the distance between the initial waypoint at VPLYD and the Alexanders East Heliport, which is the southernmost heliport on the far south shore of Long Island. Assuming a 100 knot groundspeed, the FAA calculated the direct route time as 23.4 minutes (39 nm) and the North Shore route time as 30.6 minutes (51 nm), a difference of 7 minutes.

minimis.[10] One commenter stated that aircraft on the North Shore Helicopter Route could impact wildlife. However, the commenter does not provide any information in support of this assertion, and the FAA is not aware of any reasonably foreseeable adverse impacts on wildlife from helicopters flying on the route at or above 2,500 feet MSL.

The Town of East Hampton raised several objections to the FAA's use of the cited categorical exclusion for the rule. First, the Town asserted that the categorical exclusion is inconsistent with the FAA's intent in proposing the rule. According to the Town, if the rule would not significantly affect the human environment, there is no basis for saying it would reduce noise impact on nearby communities as stated in the NPRM. Second, the Town contended that the FAA mischaracterized the legal standard for a categorical exclusion by limiting the analysis to adverse impacts. Third, the Town claimed that the FAA used the wrong categorical exclusion for the rule.

The FAA does not agree that the cited categorical exclusion, paragraph 312f of FAA Order 1050.1E, is inconsistent with the purpose of the rule. As stated above, the purpose of the rule is to maximize use of the North Shore Helicopter Route and reduce the noise impact of helicopter flights over nearby communities. Categorical exclusion of the rule from further environmental review under NEPA is fully consistent with that purpose and is based on the FAA's analysis of the environmental effects of the rule. The FAA also disagrees with the Town's contention that the agency erred in basing its application of the categorical exclusion on the absence of significant adverse environmental impacts. The agency is not aware of any controlling authority that precludes application of a categorical exclusion to an action because the action has an environmental benefit. Finally, the cited categorical exclusion specifically applies to regulations and therefore is appropriate for this rule.

E. Procedural/Miscellaneous

ERHC argued the FAA has not cited the proper authority for this rule and that reliance on section 44715 is "overstated and misapplied." ERHC further commented that the FAA failed to consult with the Administrator of the EPA prior to prescribing standards and regulations under section 44715(a), as required. It also contended that § 44715(a) was intended to authorize the FAA to promulgate regulations addressing certification standards, not airspace matters.

NATA, UTC/UTFlight, and AOPA commented that this is the first action by the FAA to mandate the use of a noise abatement procedure without providing some type of operational or environmental analysis. They argued that, historically, the FAA addresses noise abatement action areas initiated by an airport sponsor, as it applies to takeoffs and landings, not to the enroute operation of the aircraft.

In response to the procedural comment, the FAA did consult with the Administrator of the EPA prior to issuing the NPRM, in accordance with the requirements of section 44715(a). That communication and the EPA response have been placed in the docket for this proceeding. In promulgating this rule, the FAA cites to sections 40103(b)(2) and 44715 to articulate the breadth of its authority to address noise stemming from aircraft overflights, aircraft operations in the airport environment and setting aircraft certification standards. Contrary to the commenters' assertion, the FAA possesses and has exercised its authority in the past to address noise issues associated with aircraft overflights.[11] The FAA continues to believe that noise generated by aircraft overflights generally is best addressed locally and with voluntary measures as the primary consideration. However, the FAA is within its authority to address the issue by regulatory action.

UTC/UTFlight argued that the appropriate regulatory structure already exists in 14 CFR 91.119, which provides for minimum safe altitudes. UTC/UTFlight contended that this mandatory route redefines minimum safe altitudes.

The FAA disagrees with UTC/UTFlight that compliance with § 91.119 adequately addresses this issue. Section 91.119 provides the minimum safe altitudes for aircraft and helicopters and is not intended to address aircraft noise. Pilots must follow this provision, unless an altitude is otherwise specified for certain operations. Part 93 in 14 CFR sets forth specific rules for aircraft operations that are necessary for designated airports or defined areas.

GAMA, ERHC, and AOPA contended that the 30-day comment period was too compressed to provide the needed analysis and response to a proposal that raises significant technical, safety, environmental, and operational concerns. A number of the commenters requested that the FAA withdraw the NPRM and some commenters further requested that the FAA instead engage in a series of public meetings and a process to establish routes that would produce effective noise mitigation and provide safety and operational enhancements.

The Administrative Procedure Act[12] does not specify a minimum period for comment. The FAA finds 30 days is not an unreasonable amount of time to comment on the use of a route that has been in place since 2008 and, according to ERHC, has a high rate of use. The FAA also notes that within the 30-day comment period, approximately 900 comments were filed, some of which were extensive. Furthermore, FAA regulations governing rulemaking provide that late filed comments will be considered to the extent possible only if they do not significantly delay the rulemaking process. (See 14 CFR 11.45(b)) The Agency notes that some commenters submitted late comments, and they were considered by this agency.

ERHC also commented the FAA did not perform the required full regulatory evaluation under Executive Order 12866 and Department of Transportation Order 2100.5. ERHC argued that the FAA incorrectly concluded that the cost of the NPRM would be so minimal as to not require full review and that the NPRM was "not a significant regulatory action" and therefore exempt from

[10] See Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The North Shore Helicopter Route is located entirely within Suffolk County, New York, which has been designated under the Clean Air Act as a nonattainment area for particulate matter (PM–2.5) and a moderate nonattainment area for ozone. See U.S. Environmental Protection Agency (EPA), "Currently Designated Nonattainment Areas for All Criteria Pollutants," available at *http://www.epa.gov/oaqps001/greenbk/ancl.html*. In addition, the state of New York is within the Ozone Transport Region established in section 184(a) of the Clean Air Act, 42 U.S.C. 7511c(a). EPA has determined that for such nonattainment areas, emissions of less than 50 tons per year of volatile organic compounds and 100 tons per year of nitrogen oxides, PM–2.5, or sulfur dioxide are *de minimis*. 40 CFR 93.153(b)(1). Using conservative assumptions, an analysis by the FAA (a copy of which has been placed in the docket for this rulemaking), indicates that emissions of these pollutants from combustion of an additional 117,000 gallons of fuel would be well below these *de minimis* levels.

[11] *See:* 33 FR 11748; August 20, 1968 (final rule designating special air traffic rule for Lorain County Regional Airport, Lorain, Ohio to route low altitude terminal traffic away from the Oberlin College Conservatory of Music to avoid audible disturbances; 35 FR 5466; April 2, 1970 (final rule designating Prohibited Airspace (P–66) Mount Vernon, VA based on a concern over the danger to irreplaceable historic structures and the noise nuisance caused by the low flying aircraft, including helicopters, over Mount Vernon grounds); 62 FR 1192; January 8, 1997 (final rule temporarily banning commercial air tour operations over Rocky Mountain National Park in order to prevent any potential adverse noise impact from these sightseeing aircraft).

[12] 5 U.S.C. 551 *et seq.*

review of the Office of Management and Budget (OMB).

As further discussed in the section addressing economic concerns, at the NPRM stage and now, the action was—and is—not expected to result in more than minimal additional costs on the affected helicopter operators. Consequently, the FAA properly determined that the proposal was not a significant regulatory action, as defined under Executive Order 12866, was not significant in accordance with DOT's policy, and did not require a full regulatory evaluation under either document. Upon OMB appraisal of the NPRM, it agreed with FAA that it was non-significant.

ERHC commented that the regulatory text is "unconstitutionally vague" and that the "NPRM's lack of clarity would almost certainly result in inadvertent violations and inconsistent enforcement of the rule," which violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

The FAA notes that ERHC was instrumental in working with the FAA to develop the North Shore Helicopter Route. Since this route was charted in 2008, the FAA is not aware of complaints from any operator about inability to navigate along the route, or any concern with the route as designed and charted. Unlike a route designed for IFR use, a VFR route does not have lateral dimension. The mandatory portion of the route follows the northern shoreline of Long Island from the VPLYD waypoint point to the northern tip of Long Island at Orient Point. As stated previously, the FAA chose waypoints that were based on the proximity to easily identifiable visual landmarks. The FAA believes that the route was developed using visual references that pilots can easily identify. We do not conclude that the requirements of this rule are vague and will result in inconsistent enforcement.

As with any other rule, the FAA will enforce this rule to the best of its capabilities. Reports of violations will be investigated to determine if the operator deviated for reasons of safety, weather, or to transit to its destination. While operators will be given the maximum latitude for deviations related to safety, a pattern of deviations would indicate that an operator was interested more in cutting short the route rather than any legitimate safety concerns. Any violation of this rule may result in a civil penalty or the suspension or revocation of the pilot's airman certificate.

F. Economic Evaluation

The FAA received several comments on our regulatory evaluation and the small business impact. These commenters included ERHC, GAMA, HAI, NATA, and NBAA, who stated the potential economic impact of the proposed regulatory changes, particularly on small businesses, is significant. The commenters believed the rulemaking's cost is significant because the change in flight procedures would drive longer flight paths for rotorcraft operating in the North Shore airspace. This in turn would have an impact on fuel consumed. They also believed that the final rule would force costs for additional avionics equipage.

ERHC asserted that mandating use of the North Shore Helicopter Route, as proposed, would increase the average flight of operations not currently using the route by 10 minutes. It estimated that 15 percent of current operations (approximately 2,250 operations) do not follow the voluntary route. Based on these assumptions, ERHC argued (assuming an 85 percent compliance rate) that the rule would result in the additional consumption of slightly less than 117,000 gallons of fuel per year.

The FAA cannot confirm that the route is currently being used 85 percent of the time. However, for the sake of estimating the cost of the rule, the FAA assumes that ERHC is correct. Using EHRC's numbers, the FAA calculated the cost associated with the use of the additional fuel. The nominal fuel price per gallon from the latest FAA fuel price forecast for the second half of 2012 through the first half of 2014 is $3.17.[13] Multiplying the average fuel price by ERHC's estimate of the additional fuel burn, over 2 years, that nominal cost equals $745,875, or $714,569 at a 7 percent discount rate. Applying the nominal value on a per flight basis, the nominal increase in fuel costs on a per flight basis is approximately $150. However, as noted in footnote 12, the FAA calculated the increase in travel time from the VPLYD and Alexanders East Heliport, which the FAA believes represents the worst case in terms of additional travel time, and found that the increase in time should be approximately 7 minutes. Assuming ERHC's estimate of the amount of fuel burned per minute of flight time is correct, then with an increase in flight time of 7 minutes there would be an increase in fuel cost of $105 for that flight. Since an operation between these two points represents the worst case, the average of all affected flights would be somewhat lower. Thus the total discounted cost over a 2-year period would be significantly lower than $714,569.

The FAA has determined that this action is not expected to result in more than minimal additional costs on the affected helicopters. Operators that cannot comply with the route as published due to operational limitations, performance factors, weather conditions, or safety considerations are allowed to deviate from the provisions of Subpart H.

G. Sunset Provision

As discussed above, it is both impractical and imprudent to require all helicopters to fly along the entire North Shore Helicopter Route. Operators must land at some point, and will have to deviate from the route for that reason. Additionally, safety considerations make use of the route imprudent under some circumstances and for some aircraft. As has also been noted above, the FAA does not know what the current rate of compliance with the route is or the circumstances surrounding decisions not to use it. ERHC contends that the current rate of compliance is already very high. There is no reason to retain this rule if the FAA determines that it is not actually improving the noise situation along the north shore of Long Island.

The FAA has decided to sunset this rule in 2 years if we determine there is no meaningful improvement in the effects of helicopter noise on quality of life or that the rule is otherwise unjustified. Should there be such an improvement, the FAA may, after appropriate notice and opportunity for comment, decide to make the rule permanent. Likewise, should the FAA determine that reasonable modifications could be made to the route to better address noise concerns (and any other relevant concerns), we may choose to modify the rule after notice and comment.

The FAA recognizes that we did not contemplate a sunset provision when we published the NPRM. The FAA has decided to finalize this provision without providing an additional opportunity to comment because we have determined that providing such a comment period is unnecessary. The FAA has already received hundreds of comments on the advisability of finalizing this rule. Commenters fall squarely into three camps: those who oppose the rule as burdensome and unnecessary, those who oppose the rule because they believe it does not go far enough, and those who support the rule.

[13] *http://www.faa.gov/about/office_arg/headquarters_offices/apl/aviation_forecasts/aerospace_forecasts/2012-2032/.*

The FAA does not anticipate that providing an opportunity to comment on a sunset provision will generate any discussion beyond that which has already been provided in the comments received on the NPRM. The FAA does note that any decision to extend the rule beyond 2 years or to modify the existing route will be subject to notice and an opportunity to comment.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This action is not expected to result in more than minimal additional costs on the affected helicopter operators because many of the existing operators already comply with the final rule requirements. Further, no new systems are required. Thus, the rule imposes no more than minimal cost. However, given the number of comments submitted in response to the NPRM, this final rule has been designated as significant under Executive Orders 12866 and 13563.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

ERHC has 35 members who provide commercial operations. According to ERHC's comments to the NPRM, the majority of these operators fly over Long Island and could be impacted in some way by this final rule. The FAA presumes that all 35 commercial operators have fewer than 1,500 employees. However, assuming ERHC's estimates of current compliance are correct, somewhere between zero and fifteen percent of total operations are likely to be directly affected by this rule.

As noted above, the FAA believes those changes would result in an estimated increase in costs of $105 to $150 dollars per affected flight. The costs of commercial operations between Manhattan and the east end of Long Island generally range between $3,500 and $9,500 per trip, depending on the number of engines and available seats. The FAA believes that the vast majority of operators conduct operations on behalf of paying customers because of the cost associated with owning and maintaining a helicopter for personal use. Accordingly, we base our determination that the impact on small entities will not be significant on the additional cost associated with flying along the North Shore Helicopter Route. At an additional $150, the increase per affected operation would range between 4 and 1.5 percent. At an additional $105, the increase per affected operation would range between 3 and 1.1 percent. The FAA also believes that, given the cost of the overall operation to a paying customer, much of that cost is likely to simply be passed on to the customer. To the extent private operators incur the additional fuel cost, the FAA believes those costs the operators will turn to additional forms of transportation only if they determine the additional cost in fuel justifies the longer times required to reach their destination by other forms of transportation. Given the cost between commercial helicopter rates and the cost to take a train or drive, the FAA believes private operators will likely absorb the additional cost because they value their time at a rate that already far exceeds the existing cost difference between helicopter travel and other forms of transportation. The rule does not require the purchase of additional equipment and allows pilots to deviate from the provisions if necessary, due to operational limitations of the helicopter, performance factors, weather conditions, or safety considerations. Therefore, the rule imposes only minimal operating cost.

The FAA received several comments from the private sector and industry based on our regulatory evaluation and the small business impact. ERHC, GAMA, HAI, NATA, and NBAA commented that the potential economic impact of the regulatory changes, particularly on small businesses, is significant. These commenters believed the rulemaking's cost is significant because the change in flight procedures will drive longer flight paths for helicopters operating in the North Shore airspace, which will have an impact on fuel consumed. They also believed that the final rule would force costs for additional avionics equipage.

The FAA notes that numerous small business helicopter charter operators commented that they were already in compliance with the final rule. The FAA further notes that operators that cannot comply with the route as published due to safety, weather conditions, or transitioning to or from a destination or point of landing are allowed to deviate from the provisions of Subpart H. Therefore, this action is

not expected to result in more than minimal additional costs on the affected helicopters because those operators are allowed to deviate from the provisions of the final rule.

Therefore, as the acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) 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." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no current or new requirement for information collection associated with this amendment.

E. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

F. Environmental Analysis

Under regulations issued by the Council on Environmental Quality, Federal agencies are required to establish procedures that, among other things, identify agency actions that are categorically excluded from the requirement for an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 because they do not have a significant effect on the human environment. See 40 CFR 1507.3(b)(2)(ii), 1508.4. The required agency procedures must also "provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." See 40 CFR 1508.4. For FAA actions, these "categorical exclusions" and "extraordinary circumstances" are listed in Chapter 3 of FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures."

The FAA has determined that this final rule qualifies for the categorical exclusion identified in paragraph 312f of FAA Order 1050.1E. That categorical exclusion applies to "[r]egulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment)." The existing New York North Shore Helicopter Route is a VFR route, use of which is voluntary. Additionally, the route is located entirely over water and away from noise-sensitive locations. Furthermore, the number of helicopter operations along the north shore of Long Island is not high enough for this rule to have any potential to result in significant noise impacts. An analysis of emissions based on an overly conservative fuel burn estimate shows that the resulting air emissions would be well below levels determined by the EPA to be *de minimis*.[14]

Therefore, implementation of this final rule is not expected to result in significant adverse impacts to the human environment. Moreover, implementation of the final rule will not involve any of the extraordinary circumstances listed in Section 304 of FAA Order 1050.1E.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal 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.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at *http://www.fdsys.gov*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local

[14] See Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The North Shore Helicopter Route is located entirely within Suffolk County, New York, which has been designated under the Clean Air Act as a nonattainment area for particulate matter (PM–2.5) and a moderate nonattainment area for ozone. See U.S. Environmental Protection Agency (EPA), "Currently Designated Nonattainment Areas for All Criteria Pollutants," available at *http://www.epa.gov/oaqps001/greenbk/ancl.html*. In addition, the state of New York is within the Ozone Transport Region established in section 184(a) of the Clean Air Act, 42 U.S.C. 7511c(a). EPA has determined that for such nonattainment areas, emissions of less than 50 tons per year of volatile organic compounds and 100 tons per year of nitrogen oxides, PM–2.5, or sulfur dioxide are *de minimis*. 40 CFR 93.153(b)(1). Using conservative assumptions, an analysis by the FAA (a copy of which has been placed in the docket for this rulemaking), indicates that emissions of these pollutants from combustion of an additional 117,000 gallons of fuel would be well below these *de minimis* levels.

FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

VII. The Amendment

List of Subjects in 14 CFR Part 93

Air traffic control, Airspace, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44715, 44719, 46301.

■ 2. Add subpart H to part 93 to read as follows:

Subpart H—Mandatory Use of the New York North Shore Helicopter Route

Sec.
93.101 Applicability.
93.103 Helicopter operations.

Subpart H—Mandatory Use of the New York North Shore Helicopter Route

§ 93.101 Applicability.

This subpart prescribes a special air traffic rule for civil helicopters operating VFR along the North Shore, Long Island, New York, between August 6, 2012 and August 6, 2014.

§ 93.103 Helicopter operations.

(a) Unless otherwise authorized, each person piloting a helicopter along Long Island, New York's northern shoreline between the VPLYD waypoint and Orient Point, shall utilize the North Shore Helicopter route and altitude, as published.

(b) Pilots may deviate from the route and altitude requirements of paragraph (a) of this section when necessary for safety, weather conditions or transitioning to or from a destination or point of landing.

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

Ray LaHood,

Secretary of Transportation.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2012–16667 Filed 7–3–12; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. FDA–2011–C–0050]

D&C Red No. 6 and D&C Red No. 7; Change in Specification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is revising its requirements for D&C Red No. 6 and D&C Red No. 7 by replacing the current specification for "Ether-soluble matter" with a maximum limit of 0.015 percent for the recently identified impurity 1-[(4-methylphenyl)azo]-2-naphthalenol. This action is in response to a petition filed by Sun Chemical Corp.

DATES: This rule is effective August 7, 2012, except as to any provisions that may be stayed by the filing of proper objections. Submit either electronic or written objections and requests for a hearing by August 6, 2012. See section XI of this document for information on the filing of objections.

ADDRESSES: You may submit objections and requests for a hearing, identified by Docket No. FDA–2011–C–0050, by any of the following methods:

Electronic Submissions: Submit electronic objections in the following way:

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

Written Submissions: Submit written objections in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–C–0050 for this rulemaking. All objections received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting objections, see section XI of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Teresa A. Croce, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1281.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of April 14, 2011 (76 FR 20992), FDA announced that Sun Chemical Corp., 5020 Spring Grove Ave., Cincinnati, OH 45232, had filed a color additive petition (CAP 1C0290) requesting that FDA amend its regulations for D&C Red No. 6 and D&C Red No. 7 by replacing the current specification for "Ether-soluble matter" with a maximum limit of 0.015 percent for the recently identified impurity 1-[(4-methylphenyl)azo]-2-naphthalenol. As part of CAP 1C0290, Sun Chemical Corp. also requested that FDA remove Appendix A in part 74 (21 CFR part 74), which pertains to the ether-soluble matter specification.

D&C Red No. 6 and D&C Red No. 7 are principally monosulfo monoazo dyes prepared by the coupling of diazotized 2-amino-5-methylbenzenesulfonic acid with 3-hydroxy-2-naphthalenecarboxylic acid in alkaline medium. D&C Red No. 6 is produced as the disodium salt, whereas D&C Red No. 7 is the corresponding monocalcium salt. D&C Red No. 6 is listed in § 74.1306 for use in coloring drugs and in § 74.2306 for use in coloring cosmetics. D&C Red No. 7 is listed in § 74.1307 for use in coloring drugs and in § 74.2307 for use in coloring cosmetics. The identity and specifications in §§ 74.1306 and 74.1307 are referenced by §§ 74.2306 and 74.2307. Both color additives are required to be batch certified by FDA before they may legally be used in drugs and cosmetics marketed in the United States.

II. Regulatory History

In the **Federal Register** of December 28, 1982 (47 FR 57681), FDA published a final rule that permanently listed D&C Red No. 6 and D&C Red No. 7 for use in coloring drugs and cosmetics. The final rule described how D&C Red Nos. 6 and 7 contained ether-soluble matter for which the proponents of the color additives were not able to determine the chemical identity. FDA's final rule established a specification for ether-

soluble matter for both color additives, determined by a pass/fail test described in Appendix A of part 74. In the specified test, ether-soluble matter is extracted from each new sample submitted for batch certification and analyzed by visible spectrophotometry. As explained in the final rule, FDA determined that spectrophotometric analysis provided a means of measuring the ether-soluble matter that may be present in each batch. Appendix A includes a reference spectrum that was based on the D&C Red No. 6 lot (the D&C No. 6 reference lot) that was used for toxicology testing in support of the permanent listing of D&C Red No. 6 and D&C Red No. 7. The sample passes the test if the absorption spectrum of the analyte does not exceed the reference spectrum in Appendix A at any wavelength. The reference spectrum represents 150 percent of the ether-soluble matter in the D&C Red No. 6 reference lot. The test is not capable of further characterizing the analyte.

III. Petitioned Request

Sun Chemical Corp.'s petition is based on the recent identification of 1-[(4-methylphenyl)azo]-2-naphthalenol (CAS No. 6756–41–8), the uncarboxylated-unsulfonated homolog of the dye component, as the major component of the ether-soluble matter. The identity of the ether-soluble matter was confirmed by FDA using liquid chromatography/mass spectrometry (LC/MS) (Ref. 1). As part of this work, FDA chemists prepared and characterized a reference standard for 1-[(4-methylphenyl)azo]-2-naphthalenol for LC analysis (Ref. 1). FDA chemists also determined that the D&C Red No. 6 reference lot, which was used as the reference for Appendix A, contains 0.0099 percent of 1-[(4-methylphenyl)azo]-2-naphthalenol (Ref. 1).

In its petition, Sun Chemical Corp. notes that the spectrum in Appendix A of part 74 represents 150 percent of the ether-soluble matter in the lot that was used as the reference for the appendix, and that this lot was found to contain 0.0099 percent of 1-[(4-methylphenyl)azo]-2-naphthalenol. Based on this finding, the company notes that the pass test result (150 percent) of 0.0099 percent is 0.015 percent and that 0.015 percent therefore corresponds to the maximum amount of ether-soluble matter permitted in D&C Red Nos. 6 and 7. Accordingly, Sun Chemical Corp. requests 0.015 percent as the specification limit for 1-[(4-methylphenyl)azo]-2-naphthalenol. In addition, Sun Chemical Corp. requests that Appendix A be removed from part 74 and asks that the specification for ether-soluble matter in §§ 74.1306 and 74.1307 (which refers to the pass test in Appendix A) be replaced.

IV. Exposure Evaluation

In the final rule permanently listing D&C Red No. 6 and D&C Red No. 7, the acute cumulative exposure to these color additives was calculated to be 8 milligrams per person per day (mg/p/d), and the chronic exposure was calculated to be 2 mg/p/d (47 FR 57681 at 57685). These estimates have not changed as a result of the subject petition because both D&C Red No. 6 and D&C Red No. 7 are intended to be used in the same manner as currently permitted. In addition, the maximum amounts of ether-soluble matter permitted in D&C Red Nos. 6 and 7 have not changed, as the proposed specification limit, 0.015 percent, corresponds to the pass test result in Appendix A (150 percent of 0.0099 percent is 0.015 percent). Based on the petitioner's proposed specification limit of 0.015 percent and the exposure to D&C Red Nos. 6 and 7 from their regulated uses, FDA determined that the short-term (acute) exposure would be no greater than 1.2 micrograms per person per day (µg/p/d), and the lifetime average (chronic) exposure to this impurity would be no greater than 0.3 µg/p/d. FDA concludes that no increase in exposure to 1-[(4-methylphenyl)azo]-2-naphthalenol is expected as a result of the proposed changes to §§ 74.1306, 74.1307, 74.2306, and 74.2307 because the maximum amount of this impurity permitted in the color additives has not changed (Ref. 2).

FDA also notes that it conducted a survey of the amounts of 1-[(4-methylphenyl)azo]-2-naphthalenol in D&C Red No. 6 and D&C Red No. 7 straight colors and lakes: In addition to analyzing the D&C Red No. 6 reference lot discussed earlier, FDA analyzed 25 other lots: 4 other lots of D&C Red No. 6, 4 lots of D&C Red No. 7, 8 lots of D&C Red No. 6 lake, and 9 lots of D&C Red No. 7 lake. Of these 25 other lots, only 3 contained detectable amounts of the impurity, specifically, 0.0006 percent, 0.0008 percent, and 0.002 percent (Ref. 1). FDA also analyzed for 1-[(4-methylphenyl)azo]-2-naphthalenol in samples of D&C Red No. 6 and D&C Red No. 7 submitted for batch certification between July 2009 and January 2011. Sixty-four samples of D&C Red Nos. 6 and 7 from eight domestic and foreign manufacturers were analyzed by LC for the impurity. All of the results obtained were well below 0.015 percent, and the average amount found, 0.0016 percent, is nearly an order of magnitude lower than the petitioned specification limit (Ref. 3).

V. Safety Evaluation

Under section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(b)(4)), a color additive may not be listed for a particular use unless a fair evaluation of the data and information available to FDA establishes that the color additive is safe for that use. FDA's color additive regulations at 21 CFR 70.3(i) define safe as the existence of "convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Numerous toxicology studies on D&C Red Nos. 6 and 7 were performed to support their permanent listing (47 FR 57681). The color additives tested contained the ether-soluble matter, now identified as primarily 1-[(4-methylphenyl)azo]-2-naphthalenol. Based on the results from these studies, the Agency concluded that D&C Red Nos. 6 and 7 (including the ether-soluble matter as determined by the test described in Appendix A) for use in drugs and cosmetics, excluding use in the area of the eye (47 FR 57681 at 57686), is safe. Therefore, although the chemical identity of the principal component of the ether-soluble matter (i.e., 1-[(4-methylphenyl)azo]-2-naphthalenol) was not known when D&C Red Nos. 6 and 7 were permanently listed, the safety of the color additives, which contained the unknown ether-soluble matter, was assessed by FDA through the results of toxicological testing of the color additives containing this impurity.

The requested revision would not change the composition of D&C Red No. 6 or D&C Red No. 7 specified in the applicable color additive regulations, including the permissible level of the impurity. Nor would it change the authorized intended use. Therefore, the Agency concludes that the proposed revision would not affect FDA's safety evaluation in the final rule listing D&C Red No. 6 or D&C Red No. 7. Because there is no increase in the intake of the impurity of D&C Red No. 6 and D&C Red No. 7 beyond a level that has already been established as safe, FDA has no safety concerns regarding the petitioned revision.

VI. Proposed Removal of Appendix A

FDA will no longer analyze the impurity by visible spectrophotometry when new samples of the color additive are submitted for batch certification. Instead, FDA will test the impurity using reversed-phase high performance liquid chromatography and will continue to do so for as long as the

Agency determines that reversed-phase high performance liquid chromatography is appropriate. Because Appendix A of part 74 describes the spectrophotometry test for the ether-soluble matter, and because FDA will no longer analyze the impurity using spectrophotometry, FDA agrees with Sun Chemical Corp.'s request that Appendix A be removed from part 74.

VII. Conclusion

FDA reviewed data in the petition from Sun Chemical Corp. and other relevant data and information to evaluate the safety of revising its requirements for D&C Red Nos. 6 and 7 by replacing the current specification for ether-soluble matter with a maximum limit of 0.015 percent for the impurity 1-[(4-methylphenyl)azo]-2-naphthalenol and by removing Appendix A in part 74, which pertains to the ether-soluble matter specification. Based on this information, the Agency does not have any safety concerns with the proposed amendment and concludes that D&C Red Nos. 6 and 7 will continue to be safe and suitable for their listed uses in drugs and in cosmetics. Therefore, the regulations in part 74 should be amended as set forth in this document. In addition, FDA will no longer analyze the impurity by visible spectrophotometry when new samples of the color additive are submitted for batch certification. Instead, FDA will test the impurity using reversed-phase high performance liquid chromatography.

VIII. Public Disclosure

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition will be made available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, the Agency will delete from the documents any material that is not available for public disclosure before making the documents available for inspection.

IX. Environmental Impact

The Agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 1C0290 (76 FR 20992). No new information or comments have been received that would affect the Agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

X. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Objections

This rule is effective as shown in the **DATES** section of this document; except as to any provisions that may be stayed by the filing of proper objections. Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the Agency has received or lack thereof in the **Federal Register**.

XII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. B.P. Harp, A.L. Scher, H.-H.W. Yang, et al., "Reversed-Phase LC Determination of Two Manufacturing Intermediates, the Unsulfonated Subsidiary Color, and 4-Methyl-Sudan I in D&C Red No. 6, D&C Red No. 7, and Their Lakes," *Journal of AOAC International*, vol. 92, pp. 888–895, 2009.

2. Memorandum to the file, CAP 1C0290 from H. Lee, FDA to T. Croce, FDA dated February 23, 2011.

3. Memorandum to the file, CAP 1C0290 from B. Harp, FDA to T. Croce, FDA dated April 18, 2011.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

■ 1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 74.1306 is amended by removing the entry for "Ether-soluble matter" in paragraph (b) and adding in its place a specification for "1-[(4-methylphenyl)azo]-2-naphthalenol" to read as follows:

§ 74.1306 D&C Red No. 6.

* * * * *

(b) * * *

1-[(4-methylphenyl)azo]-2-naphthalenol, not more than 0.015 percent.

* * * * *

■ 3. Section 74.1307 is amended by removing the entry for "Ether-soluble matter" in paragraph (b) and adding in its place a specification for "1-[(4-methylphenyl)azo]-2-naphthalenol" to read as follows:

§ 74.1307 D&C Red No. 7.

* * * * *

(b) * * *

1-[(4-methylphenyl)azo]-2-naphthalenol, not more than 0.015 percent.

* * * * *

■ 4. Part 74 is amended by removing Appendix A to Part 74—The Procedure for Determining Ether Soluble Material in D&C Red Nos. 6 and 7.

Dated: *June 29, 2012.*

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2012–16581 Filed 7–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2011–N–0505]

Effective Date of Requirement for Premarket Approval for Cardiovascular Permanent Pacemaker Electrode

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the cardiovascular permanent pacemaker electrode. The Agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements and the benefits to the public from the use of the device. This action implements certain statutory requirements.

DATES: This rule is effective October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Burns, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1646, Silver Spring, MD 20993–0002, 301–796–5616.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), and the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807.

A preamendments device that has been classified into class III may be marketed by means of premarket notification procedures (510(k) process) without submission of a PMA until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b)(1) of the FD&C Act establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the FD&C Act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The regulation; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the FD&C Act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change in reclassification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the FD&C Act. Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

When a rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the FD&C Act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification of the device under section 513 of the FD&C Act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the latter of the two dates, commercial distribution of the device must cease because the device would be deemed adulterated under section 501(f).

The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the

latter of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334), if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III device that is the subject of this regulation.

The FD&C Act does not permit an extension of the 90-day period after issuance of a final rule within which an application or notice is required to be filed. The House Report on the 1976 amendments states that "* * * [t]he thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application of premarket approval" (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976)).

The SMDA added section 515(i) to the FD&C Act requiring FDA to review the classification of preamendments class III devices for which no final rule requiring the submission of PMAs has been issued, and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, the SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the FD&C Act on specific devices, in the interest of public health, independent of the procedures of section 515(i). Proceeding directly to rulemaking under section 515(b) of the FD&C Act is consistent with Congress' objective in enacting section 515(i), i.e., that preamendments class III devices for which PMAs have not been previously required either be reclassified to class I or class II or be subject to the requirements of premarket approval.

In the **Federal Register** of May 6, 1994 (59 FR 23731) (the May 6, 1994, notice), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the FD&C Act for preamendments class III devices for which FDA had not yet required premarket approval.

In the **Federal Register** of August 8, 2011 (76 FR 48058) (the August 8, 2011, proposed rule), FDA published a proposed rule to require the filing under section 515(b) of the FD&C Act of a PMA or notice of completion of a PDP for the cardiovascular permanent pacemaker electrode. In accordance with section 515(b)(2)(A) of the FD&C Act, FDA included in the preamble of the proposed rule the Agency's tentative findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the FD&C Act, and the benefits to the public from use of the device. The August 8, 2011, proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the Agency's findings. Under section 515(b)(2)(B) of the FD&C Act, FDA provided an opportunity for interested persons to request a change in the classification of the devices based on new information relevant to its classification. Any petition requesting a change in classification for the cardiovascular permanent pacemaker electrode was required to be submitted by August 23, 2011. The comment period for the cardiovascular permanent pacemaker electrode closed November 7, 2011.

FDA received no comments on the proposed rule. FDA received no petitions requesting a change in the classification of the devices.

II. Findings With Respect to Risks and Benefits

As required by section 515(b) of the FD&C Act, FDA published its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that this device have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the advisory committees (panels) for the classification of these devices along with information submitted in response to the 515(i) Order (April 9, 2009 (74 FR 16214)), and any additional information that FDA has encountered. Additional information regarding the risks as well as classification associated with the cardiovascular permanent pacemaker electrode can be found in the following proposed and final rules published in the **Federal Register** on these dates: March 9, 1979 (44 FR 13379); February 5, 1980 (45 FR 7943); and May 11, 1987 (52 FR 17732 at 17736).

III. The Final Rule

Under section 515(b)(3) of the FD&C Act, FDA is adopting its findings as published in the preamble to the proposed rule. FDA is issuing this final rule to require premarket approval of these generic types of devices for class III preamendments devices by revising part 870.

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before 90 days after the date of publication of the final rule in the **Federal Register**, for any of this class III preamendments device that were in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before 90 days after the date of publication of the final rule in the **Federal Register**. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendments device subject to this rule that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of this class III preamendments device is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the FD&C Act, and commercial distribution of the device must cease immediately. The device may, however, be distributed for investigational use, if the requirements of the IDE regulations (part 812) are met.

IV. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize

net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because none of the manufacturers of affected products are small businesses, the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any one-year expenditure that would meet or exceed this amount.

A. Costs of the Rule

Under the final rule, FDA will require producers in the cardiovascular permanent pacemaker electrode industry to obtain an approved PMA or establish a PDP before marketing new products. Similarly, producers of cardiovascular permanent pacemaker electrodes that are already on the market will need to submit PMAs or establish PDPs in order to continue commercial distribution of these products. Based on an analysis of registration and listing data, manufacturer Web sites, and responses to previous **Federal Register** requests for comment, FDA estimates that 5 to 10 manufacturers are marketing approximately 18 to 23 devices that will be affected by this final rule. We therefore estimate that the final rule will generate between 18 and 23 PMA or PDP submissions. FDA has estimated an upper bound on the cost of a PMA at approximately $1,000,000 (see, for example, 73 FR 7501, February 8, 2008), and we assume that the cost of a PDP is roughly equal to that of a PMA; this yields a rule-induced upfront cost of between $18 and $23 million. We lack data with which to estimate how the burden of this cost will be distributed among device manufacturers, patients and insurance providers.

For a new product (i.e., a cardiovascular permanent pacemaker electrode not currently on the market), the rule-induced cost will be the difference between the cost of preparing and submitting a PMA and the cost of preparing and submitting a 510(k) application. However, between August of 2004 and the present, FDA has not received any submissions for new devices of the type subject to the final rule. We expect the recent pattern of zero new product introduction to continue; therefore, the final rule will not generate submission costs on an ongoing basis.

Some producers of devices that are subject to the final rule could be dissuaded from seeking approval by the cost of submitting a PMA or by a low expectation that FDA will grant approval for their products. In these cases, producers will experience a rule-induced cost equal to the foregone expected profit on the withdrawn or withheld cardiovascular permanent pacemaker electrodes, which is necessarily less than the cost of PMA submission (otherwise, the producers in question would not be dissuaded from seeking approval of a PMA). Additionally, there will be a welfare loss experienced by consumers who would, in the absence of the final rule, use the cardiovascular permanent pacemaker electrodes that will be withdrawn or withheld from the market as a result of the call for a PMA or a PDP. Lacking sufficient market data, we cannot quantify these consumers' welfare loss.

In addition to the cost to industry of preparing and submitting PMAs or PDPs, the final rule will impose incremental review costs on FDA. Geiger (2005) estimated that, for devices reviewed by FDA's Center for Devices and Radiological Health in 2003 and 2004, review costs averaged $563,000 per PMA (Ref. 1). Updated for inflation (using U.S. Department of Commerce, 2011) to 2010 dollars, this average review cost becomes $653,000 per PMA. Thus, the final rule's review-related costs are expected to be between $11.8 million (= 18 × $653,000) (Ref. 2) and $15.0 million (= 23 × $653,000). A portion of this total will be paid by industry in the form of user fees, with the remainder borne by general taxpayers. FDA's DUNS database reveals that the manufacturers affected by this final rule have annual revenues over $100 million, so they will not be eligible for small business user fees. The standard user fee is currently set at $236,298 for a premarket application (PMA or PDP) (75 FR 45643), so user fees will likely cover $4.3 million (= 18 × $236,298) to $5.4 million (= 23 × $236,298) of FDA review costs, with the remaining $7.5 to $9.6 million borne by general taxpayers.

B. Benefits of the Rule

The final requirement for PMAs or PDPs for cardiovascular permanent pacemaker electrodes will produce social benefits equal to the value of the information generated by the safety and effectiveness tests that producers will be required to conduct as part of the PMA or PDP process. Provided first to FDA, this information will eventually assist physicians, patients and insurance providers in making more informed decisions about these devices. FDA expects there to be approximately 18 to 23 PMA or PDP submissions as a result of the final rule, but we are unable to quantify the value of information associated with each submission.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 812 have been approved under OMB control number 0910–0078; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

The effect of this rule, is to shift certain devices from the 510(k) premarket notification process to the PMA process. To account for this change, FDA intends to transfer some of the burden from OMB Control Number 0910–0120, which is the control number for the 510(k) premarket notification process, to OMB Control Number 0910–0231, which is the control number for

the PMA process. As noted in this document, FDA estimates that it will receive 21 new PMAs as a result of this rule. Based on FDA's most recent estimates, this will result in a 21,789 hour burden increase. FDA also estimates that there will be 21 fewer 510(k) submissions as a result of this rule. Based on FDA's most recent estimates, this will result in a 2,860 hour burden decrease. Therefore, on net, FDA expects a burden hour increase of 18,930 due to this regulatory change.

VIII. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday. FDA has verified Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Geiger, Dale R, "FY 2003 and 2004 Unit Costs for the Process of Medical Device Review." September 2005, *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/ucm109216.*
2. U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Product Accounts Table 1.1.9, *http://www.bea.gov/national/nipaweb/SelectTable.asp*, accessed March 25, 2011.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 870.3680 is amended by revising paragraph (c) to read as follows:

§ 870.3680 Cardiovascular permanent or temporary pacemaker electrode.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before October 4, 2012, for any permanent pacemaker electrode device that was in commercial distribution before May 28, 1976, or that has, on or before October 4, 2012, been found to be substantially equivalent to any permanent pacemaker electrode device that was in commercial distribution before May 28, 1976. Any other pacemaker repair or replacement material device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: June 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–16486 Filed 7–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

[NPS–WASO–REGS–9886; 2465–SYM]

RIN 1024–AD97

Vehicles and Traffic Safety—Bicycles

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends current regulations for designating bicycle routes and managing bicycle use within park units throughout the National Park System. It authorizes park superintendents to open existing trails to bicycle use within park units under specific conditions, in accordance with appropriate plans and in compliance with applicable law. It also retains the current requirement for a special regulation to authorize construction of new trails for bicycle use outside developed areas.

DATES: The rule is effective August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Russel J. Wilson, Regulations Program Manager, 1849 C Street NW., MS–3122, Washington, DC 20240, (202) 208–4206.

SUPPLEMENTARY INFORMATION:

Background

Bicycling is a popular recreational activity in national parks. Bicycle riders of all skill levels and ages enjoy riding on park roads and designated bicycle trails for beautiful scenery, exercise, and adventure. People bicycle alone, with friends, or with family—they bicycle to visit points of interest, to be healthy, and because it's fun.

The National Park Service (NPS) believes that, with proper management, bicycling is an appropriate recreational activity in many park areas. In other areas, due to safety or other concerns, bicycling may not be appropriate. This rule provides park superintendents with a more efficient and effective way to determine whether opening existing trails to bicycles would be appropriate in the park unit they manage. The rule also offers guidance on trail sustainability and bicycle safety.

Regulations promulgated in 1987 provide for the use of bicycles on park roads, in parking areas, and on routes designated for bicycle use (36 CFR 4.30). According to the 1987 regulations, a special regulation, specific to the individual park, must be adopted if bicycles are to be used on routes outside a park's developed areas. The NPS adopted the special regulation requirement to ensure maximum public input on decisions to allow bicycle use on routes outside of developed areas.

The Final Rule

For existing trails and for new trails located in developed areas, this final rule requires enhanced planning and environmental compliance procedures and public notice and participation, but does not require promulgation of special regulations. In addition, existing trails may not be designated for bicycle use if doing so would result in a significant impact on the environment. The NPS will continue to require the promulgation of special regulations before constructing bicycle trails outside of developed areas. The rule does not affect other existing statutory or regulatory protections for park resources and enhancement of visitor experiences.

Section 8.2 of NPS Management Policies 2006 states that "enjoyment of park resources and values by the people of the United States is part of the fundamental purpose of all [national] parks" and that the NPS "will maintain within the parks an atmosphere that is open, inviting, and accessible to every segment of American society." However, the policies emphasize that the NPS "will allow only uses that are (1) appropriate to the purpose for which the park was established, and (2) can be sustained without causing unacceptable impacts. Recreational activities and other uses that would impair a park's resources, values, or purposes cannot be allowed." NPS Management Policies 2006, 8.1.1. NPS Management Policies establish a process for determining whether a particular use is appropriate in a park unit. NPS Management Policies 2006, 8.1.2.

In compliance with these policies, the final rule places greater emphasis on an individual park planning process that incorporates environmental compliance procedures and input from the public, rather than the special rulemaking

process, to decide whether or not bicycle use is appropriate on a trail in a unit of the National Park System. The designation of a particular trail for bicycle use must be considered as part of a park plan addressing trail use, such as a recreation use plan. The final rule also requires that, at a minimum, the plan:

- Evaluates the suitability of existing trail surface and soil condition for accommodating bicycle use, or prescribes a sustainable trail design for the construction of new trails.
- Considers life cycle maintenance costs, safety considerations, strategies to prevent or minimize user conflict, methods of protecting natural and cultural resources, integration with commercial services and alternative transportation systems (if applicable).

The rule utilizes the public outreach aspects of the National Environmental Policy Act (NEPA) process by requiring, at a minimum, preparation of an Environmental Assessment (EA) for any decision to open existing hiking or horse trails to bicycles. The rule precludes the use of categorical exclusions for opening trails to bicycle use. The rule also:

- Requires a trail-specific analysis in the EA or Environmental Impact Statement (EIS). In order to authorize bicycle use on an existing trail, the EA must result in a finding of no significant impact. When an EIS is prepared, the trails must be specifically identified and evaluated within the EIS, and the Record of Decision, or an amended Record of Decision, must document that there will be no significant impacts. See NPS Management Policies 2006, 2.3.1.7.
- Requires that the superintendent must provide the public with notice of the availability of the EA and at least 30 days to review and comment on EAs for bicycle use.
- When there are no significant impacts, requires that public notice of the superintendent's determination (made pursuant to paragraph (d)(3) of the final rule) be published in the **Federal Register**. If the determination itself is not published in full, then the notice must state where to view or how to obtain a copy of the determination. This **Federal Register** notice must provide the public a 30-day period to consider and comment on the determination prior to the park opening any trails for bicycle use.
- The comment period for the written determination will be particularly important because it will allow for public comment contemporaneous with the decision to implement an earlier planning process.
- Requires that the superintendent, after considering public comment, submit to the appropriate NPS Regional Director for approval in writing the superintendent's determination that bicycle use on a trail is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations, and management objectives and will not disturb wildlife or park resources. See NPS Management Policies 2006, 1.4.7.1 (discussing unacceptable impacts to NPS park resources). The requirement for Regional Director approval is a change from the proposed rule.
- The final rule clarifies that all planning and compliance must be completed before designation of trails for bicycle use.
- The rule also requires that the trail-specific, rigorous planning and compliance process applies to new trails, and continues to require promulgation of a special regulation for construction of a new bicycle trail outside developed areas.
- For existing trails, the final rule prohibits bicycle use where significant impacts would occur.
- For existing trails, even when the environmental compliance analysis has found no significant impacts, the appropriate NPS Regional Director may decide that bicycle use is not consistent with the resources, values, and purposes of the park area, and, after considering public comment on the written determination required by the final rule, withhold approval.

By adopting these requirements, the rule meets the public participation objectives of the NPS without the necessity for promulgating a special regulation in some cases.

Unlike the proposed rule, the final rule does not require that notice of an EA for bicycle use be published in the **Federal Register**. The NPS believes that NPS Director's Order-12, Conservation Planning, Environmental Impact Analysis, and Decision-Making, and the Department of the Interior NEPA regulations ensure a robust public involvement and notification process without requiring a **Federal Register** notice. However, the final rule will continue to require that the notice of the availability of the superintendent's written determination be published in the **Federal Register** before the appropriate NPS Regional Director approves the determination. Because the final rule allows the designation of existing trails for bicycle use without rulemaking only where there are no significant impacts, the final rule departs from the proposed rule and does not apply 36 CFR 1.5 to the designation of trails for bicycle use, or (for reasons discussed below) to closures, conditions, limits and restrictions to bicycle use.

The NPS uses NEPA not only as a tool to look at whether to designate an existing trail or build a trail for bicycle use, but also as a guide in the larger aspects of NPS decision-making. Most NEPA requirements are compatible with or identical to requirements for sound management planning. In most cases, NEPA requirements are easily integrated into the planning process, and they provide the information that decision-makers need to make correct choices. Rather than create additional burdens in the planning process, following NEPA requirements should help facilitate prompt and well-informed decision-making. See NPS Handbook for Environmental Impact Analysis, § 1.5B. In some instances, particularly when bicycle trail planning and NEPA compliance is limited in scope, the superintendent's determination may also be integrated with and completed concurrently with the planning and compliance process.

The NPS will continue to prohibit bicycle use in eligible, study, proposed, recommended, and designated wilderness areas as required by NPS policy. In accordance with Section 6.3.1 NPS Management Policies 2006, all categories of wilderness, including eligible, study, proposed and recommended wilderness, will be managed with the same level of protection and under the same requirements as designated wilderness. Therefore, a superintendent may not propose either use of bicycles on existing trails or propose new bicycle trails on any lands that meet the Management Policies definition of wilderness unless this policy is specifically waived in writing by the Secretary, the Assistant Secretary, or the Director.

Paragraph (b) of the rule addresses bicycle use on administrative roads. The rule clarifies that an administrative road closed to motor vehicle use by park visitors is also closed to bicycle use unless the superintendent makes a written determination and opens the road to such use. Rather than having the determination address the general criteria for managing public use under 36 CFR 1.5 as proposed (73 FR 76987, December 18, 2008), the final rule directs that the superintendent's written determination for opening an administrative road must address the criteria required for bicycle route designation under the existing 36 CFR 4.30 regulations. The same determination—that bicycle use is

consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations, and management objectives and will not disturb wildlife or park resources—is required for authorizing bicycle trails in this rule.

After designating an administrative road as open, the superintendent may find it necessary to impose certain limits or restrictions on the use of bicycles on administrative roads to address safety considerations, avoid visitor use conflicts, or protect park resources and values. Paragraph (f) of the final rule clarifies and strengthens the superintendent's authority to close, limit, restrict, or impose conditions on bicycle use or terminate a closure or restriction on any trail or area designated as open for bicycle use, including administrative roads.

Although state law is already adopted in Part 4, specifically at 36 CFR 4.2 "State law applicable," paragraphs (g)(2) and (h)(6) of the final rule explicitly provide that state laws are adopted and apply to bicycle use. This is consistent with the NPS's response to public comments on bicycle use in its 1987 rulemaking:

> Several persons submitted comments indicating that various issues involving the use of bicycles such as speeding, reckless operation, conflicts with pedestrian use, operation against traffic, etc., were not specifically addressed by this section. The NPS intends such problems to be resolved by applying State law or paragraph (c) of this section [the provisions that now appear in paragraph (g) of this rule] which makes a bicycle operator subject to most of the other traffic regulations in Part 4.
>
> 52 FR 10675, April 2, 1987.

The rule eliminates the term "special use zone" because this term is no longer used in NPS planning documents and therefore has created unnecessary confusion in interpreting its meaning within the context of this regulation.

The NPS recognizes that some parks have completed bicycle trail planning or may have bicycle planning in progress that does not meet the new procedures in this rule for designation of trails without rulemaking. As stated, this rule is intended to provide a more efficient and effective way to determine whether opening existing trails to bicycles would be appropriate. Parks that have completed the planning process may still authorize bicycle use by supplementing their planning and compliance to conform to this rule or by concluding with a special regulation. This includes existing trails, provided that the appropriate NEPA document concludes that such use will have no significant impacts. Existing NPS special regulations authorizing bicycle routes, and routes in developed areas that have been designated through a written determination, remain in effect, and the new rule does not require that they be reissued or reauthorized.

Planning Topics

Trail Sustainability

NPS Management Policies 2006 describe backcountry as "primitive, undeveloped portions of parks. This is not a specific management zone, but rather refers to a general condition of land that may occur anywhere within a park." NPS Management Policies 2006, 8.2.2.4. NPS Natural Resource Management Reference Manual #77 (RM #77) (2006) offers comprehensive guidance to NPS employees responsible for managing, conserving, and protecting the natural resources found in National Park System units. To prevent trail deterioration, RM #77 counsels that backcountry trail corridors be sustainable:

> Sustainability of backcountry trail corridors is defined as the ability of the travel surface to support current and anticipated appropriate uses with minimal impact to the adjoining natural systems and cultural resources. Sustainable trails have negligible soil loss or movement and allow the naturally occurring plant systems to inhabit the area, while allowing for the occasional pruning and removal of plants necessary to build and maintain the trail. If well-designed, built, and maintained, a sustainable trail minimizes braiding, seasonal muddiness and erosion. It should not normally affect natural fauna adversely nor require re-routing and major maintenance over long periods of time.

Minimizing impacts to natural and cultural resources is a foundation of NPS management decisions and a management responsibility. The NPS Organic Act (16 U.S.C. 1, *et seq.*) mandates conservation of park resources for future generations and precludes impairment of park resources, and these requirements can best be met through sustainable trail design and practices.

Trampling of vegetation, compaction and erosion of trail tread materials, and trail muddiness are impacts associated with trail corridors. Trail erosion causes gullies and can cause impacts immediately adjacent to the trail corridor by exposing tree roots. Erosion of trail materials also dries out the soil substrate adjacent to trails, which is critical to ground cover, grasses, and understory plant health and success, causing further impacts and trail widening. Eroded materials can also be deposited downhill from trails and enter aquatic systems causing changes to water quality and related impacts. See ParkScience, 28(3), The Science of Trail Surveys: Recreation ecology provides new tools for managing wilderness trails, p. 60–65, Marion, Wimpey and Park, available online at *http://www.nature.nps.gov/ParkScience/index.cfm?ArticleID=544*.

To ensure that trails are sustainable, the NPS recommends an average trail profile grade of 10–12 percent, a maximum trail profile grade of 12–15 percent, and the relationship between the trail profile gradient and prevailing cross slope grade in the immediate vicinity along the trail centerline at less than one quarter ("high slope alignment angle" (Marion, Jeffrey L., 2006)). Design techniques such as grade reversals and rolling contour trails will increase sustainability by ensuring prompt drainage of rainfall and snowmelt off the trail. Construction techniques such as retaining walls, switchbacks, stone paving, and bridges can improve trail surfaces, reduce impacts, increase sustainability, and improve the visitor experience. Trail project guidelines may be augmented by state-of-the-art scientific research and landscape architectural criteria to increase sustainability. See Developing Sustainable Mountain Trail Corridors: An Overview, National Park Service, Denver, Colorado. 1991; Guide to Sustainable Mountain Trails, Trail Assessment, Planning & Design Sketchbook (Sketchbook (2007)), National Park Service, Denver, Colorado. 2007 edition, and other resources available online at the NPS Sustainable Trails page at *http://www.nps.gov/dsc/trails.htm*.

The NPS must consider the cost of initial construction as well as on-going maintenance in its management decisions. Therefore, the NPS must carefully factor costs into all analyses of trailside decisions that enhance sustainability and minimize impacts to natural and cultural resources, and consider cost variables in the NEPA compliance processes.

The Sketchbook (2007) makes the case that the sustainability of backcountry trails is as much an art as it is a science. To ensure quality and sustainability, it is essential that the expertise of an interdisciplinary team of professionals with experience in backcountry trails be utilized in the NEPA compliance processes. Trails literature since the Civilian Conservation Corps era has emphasized that interdisciplinary teams are best qualified to provide trail sustainability expertise for trail projects. Landscape architects, civil engineers, soil scientists, natural resource specialists, cultural resource specialists, botanists, biologists, interpreters, restoration ecologists, trail design

specialists, and others are important members of interdisciplinary backcountry trail teams.

Safety—Bicycle Helmet Use in National Parks

In 1987, states began adopting bicycle laws which require children 18 years of age or younger to wear a helmet. Currently, 22 states and the District of Columbia have enacted these laws. Thirteen states have no state helmet laws (Arkansas, Colorado, Idaho, Indiana, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, South Carolina, Utah, Vermont, and Wyoming). Studies show that helmet use while riding decreases the risk of head and brain injury by 70–88 percent (Thompson et al., 1989) and facial injury to upper and mid-face areas by 65 percent (Thompson et al., 1996). See *http://depts.washington.edu/hiprc/practices/topic/bicycles/helmeteffect.html.*

Among parks where statistically meaningful injury data is available, bicycling is one of the leading causes of injuries—particularly in urban parks and parks frequented by local visitors. To enhance the safety of visitors who bicycle in parks, the adoption of state law in paragraph (g)(2) includes state helmet-use laws and regulations, and parks will enforce these requirements. Also, as part of an effort to support the Healthy Parks, Healthy People initiative and safe adventures, park superintendents should consider using their authority under 36 CFR 1.5 to mandate helmet use where state laws do not exist, particularly in parks where bicycle use is prevalent in highly populated or other at-risk areas. This effort by superintendents would be consistent with NPS Management Policies, which state:

> The Service will strive to identify and prevent injuries from recognizable threats to the safety and health of persons and to the protection of property by applying nationally accepted codes, standards, engineering principles, and the guidance contained in Director's Orders * * * and their associated reference manuals * * *. These management policies do not impose park-specific visitor safety prescriptions. The means by which public safety concerns are to be addressed is left to the discretion of superintendents and other decision-makers at the park level. * * *

NPS Management Policies 2006, 8.2.5.1.

Both the National Highway Traffic Safety Administration (NHTSA) and Centers for Disease Control and Prevention, partners in traffic injury prevention, support the use of bicycle helmets by all bicyclists, every ride. Bicycle helmets are proven to be the single most important piece of safety equipment to prevent head injuries and fatalities resulting from bicycle crashes. Despite the fact that nearly 60 percent of all fatal bicycle crashes involve head injuries, only about 19 percent of adults and 15 percent of children wear bicycle helmets. According to NHTSA, in 2009 the average age of bicyclists killed and injured was 41 and 31 years old, respectively. This emphasizes the need for all riders, children and adults, to wear a bicycle helmet. NHTSA advocates that adults should be role models by following the same safety principles that they insist be followed by their children. See *http://www.cdc.gov/program/performance/fy2000plan/2000xbicycle.htm;* and National Strategy for Advancing Bicycle Safety, *http://www.nhtsa.gov/people/injury/pedbimot/bike/bicycle_safety/index.htm.*

Other Planning Considerations

Concession contracts and commercial use authorizations (CUA) give the NPS the ability to regulate commercial bicycle tours. CUAs may be issued to authorize a qualified person to offer suitable commercial services to park area visitors if the superintendent determines that the commercial services will have minimal impact on the park area's resources and values; are consistent with the purposes for which the park area was established; and are consistent with all applicable park area management plans, policies and regulations. A decision to issue a CUA (or to limit the number of CUAs to be issued) must be made in accordance with park area planning policies and procedures, including compliance with NEPA. If a concession contract authorizes the provision of bicycle services or if CUAs are issued, the NPS may include operating standards that limit numbers, require insurance, specify safety standards, and require reports from the operators to help the NPS monitor the effects of the use. Superintendents should refer to the NPS, November 18, 2005, Interim Guidelines for Commercial Use Authorizations.

The planning process can help determine if bicycling opportunities may increase overall visitation, generate youth interest in parks, or expand appreciation for our national parks. Proper planning with public participation also provides the opportunity to consider a range of alternatives to avoid or minimize impacts on natural, historic, and cultural resources and reduce conflicts with other user groups. No matter what type of planning is conducted, "(i)n its role as steward of park resources, the National Park Service must ensure that park uses that are allowed would not cause impairment of, or unacceptable impacts on, park resources and values." NPS Management Policies 2006, 1.5.

Summary of and Responses to Public Comments

The NPS published the proposed rule at 73 FR 76987 (December 18, 2008) and a correction was made in 73 FR 78680 (December 23, 2008). We accepted comments through the mail, hand delivery, and through the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments were accepted through February 17, 2009, and a total of 6,576 comment documents were received. A summary of comments and NPS responses is provided below, followed by a table that sets out, section-by-section, the changes we have made from the proposed rule to the final rule based on the analysis of the comments.

Impacts to Natural Resources

1. *Comment:* The proposed rule should be rejected because bicycle use on trails increases soil erosion and damages trails and nearby vegetation. The proposed rule does not adequately protect natural resources (including wildlife and wildlife habitats) from adverse impacts and would dramatically change the character of the parks. Bicycle use causes greater impacts to wildlife and habitats than other uses, such as hiking and horseback riding.

Response: The NPS has considered this issue and reviewed studies that gauge the environmental impacts of bicycling. It should be noted that this rule does not authorize any trails for bicycle use. This rule revises the procedure for authorizing bicycle use on certain existing trails. Individual parks that use these procedures will have to demonstrate, consistent with NPS Management Policies 2006, 1.4.7.1, that authorizing bicycle use will not cause unacceptable impacts to natural resources, including soils, vegetation, and wildlife. Generally, impacts to soils, vegetation, and wildlife from bicycles are similar to impacts from hiking and less than impacts from horseback riding or motorized vehicle use. When a trail is sustainably located, designed, and constructed, it can support low-impact uses such as hiking and biking with minimal maintenance and with no degradation of the natural resources.

The final rule requires, among other prerequisites for bicycle use, a trail suitability determination for existing trails and the sustainable design of new trails. Superintendents are required to

follow NPS Management Policies 2006, including Chapter 8, Use of the Parks (see e.g., sections 8.1 through 8.2.2.4). This rule also provides planning guidelines.

2. *Comment:* If bicycling on a trail is misused, abused, or disruptive to the environment, the NPS should maintain the right to shut the trail down through a process of public hearings.

Response: We agree, and the final rule provides superintendents with a restriction and closure authority in paragraph (f) that is independent of the general 36 CFR 1.5 "Closures and public use limits" authority. This will allow superintendents to take actions to mitigate or eliminate unforeseen safety issues, resource damage, or other management problems should they arise. Public notice of limits, restrictions, or closures must be provided under 36 CFR 1.7.

3. *Comment:* An EA should not be required for designating existing trails for bicycle use because bicycles cause no significant environmental impacts (including impacts upon soil and topography), and cause less impacts than horseback riding and no more impacts than hiking. Impacts from bicycle use can be decreased by effective NPS management and visitor education.

Response: Because impacts from bicycle use can vary depending on where a trail is located, an EA or an EIS with a specific finding of no significant impact for a bicycle trail(s) is required to designate an existing trail for bicycle use. When trails are sustainably located, designed, and constructed, impacts are normally insignificant. However, there may be cases where impacts are significant, including soil erosion, safety, and conflicts with other visitors. Consequently, this rule will preclude the use of a categorical exclusion for designating existing trails for bicycle use.

4. *Comment:* The NPS should evaluate the impact of increased biking and trail construction on wildlife, streams, and fisheries before changing the existing rule which works well.

Response: This new rule clarifies and strengthens planning and NEPA procedural requirements by which bicycle use may be considered on both existing and newly constructed trails. The previous rule simply required promulgation of a special regulation to allow bicycle use on existing or new trails outside of a developed area. This revision requires that bicycle use on trails must be addressed in a planning document that addresses specific key criteria. Some of these criteria are trail suitability or sustainable trail design, lifecycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, and integration with commercial services and alternative transportation systems (if applicable). Bicycle use must also be addressed with a site-specific NEPA analysis. The site-specific EA or EIS would address impacts to wildlife, streams, and fisheries from increased bicycle use and trail construction.

Impacts to Visitor Use and Experience

5. *Comment:* Bicycle use should not be allowed on existing trails in order to avoid conflicts and accidents with established users of such trails (e.g. hikers, equestrians). Each trail should be limited to a single use (e.g. bicycles, hiking, or horseback riding) to avoid user conflicts. The NPS should be more concerned with the safety of hikers and equestrians than the promotion of bicycle use. The proposed rule does not adequately prevent user conflicts and ensure safety on multi-use trails. The proposed rule will displace existing users of trails.

Response: The NPS is concerned with the safety of all park visitors. This rulemaking places more emphasis on planning and impact analysis and requires that safety and user conflict must be evaluated. Specifically, the rule requires that an existing trail cannot be designated for bicycle use unless it is determined that there will be no significant impacts, including impacts to visitor safety. The final rule also requires that "safety considerations [and] methods to prevent or minimize user conflicts" be considered as part of the planning process in paragraph (d)(1)(ii).

6. *Comment:* Bicycle use should be limited to existing paved roads and should not be permitted on any trails. There are many trails open to mountain bike use in national forests and other federally-owned lands.

Response: Bicycling is a family-oriented activity that contributes to the health and well-being of those that enjoy it, and the NPS believes that bicycle use need not be limited to existing paved roads. In many park areas bicycling on various types of trails, fire roads, abandoned railroad right-of-ways, and canal towpaths is an appropriate method of touring, sightseeing, and otherwise enjoying National Park System resources. In other park areas bicycling may not be appropriate. This determination is best made at the park level with appropriate NPS regional level review. Currently, the NPS has a variety of bicycle use trails in a variety of park areas around the country, including Golden Gate National Recreation Area, Saguaro National Park, Grand Teton National Park and Delaware Water Gap National Recreation Area.

7. *Comment:* Trails should be open to specific uses at assigned times based upon the amount of traffic on the trails.

Response: This rule implements procedural changes that will provide an opportunity to consider specific uses at assigned times and the appropriateness of other local rules and mitigation measures during the bicycle use planning process undertaken by the individual park areas.

8. *Comment:* The proposed rule should include rules of the road for bicycle use on roads and trails open to other uses (e.g., hiking, horseback riding). There should be a national standard for "appropriate use" of bicycles on backcountry trails and administrative roads that complies with NPS Management Policies and emphasizes slow-paced sightseeing rather than thrill-seeking at fast speeds.

Response: This rule contemplates consideration of locally crafted rules of the road and equipment restrictions during planning and compliance with NEPA. Time-of-day or alternate-day authorization of uses, one-way riding requirements on loop trails, and requiring bicyclists to dismount and walk their bicycle through congested areas are some options for consideration during planning processes. Paragraph (f) of the rule also authorizes the superintendent to impose use restrictions should the need arise. When implementing this rule, individual parks may, for example, consider ways to accommodate the safe use of bicycle trails for slow to moderate paced access, sightseeing, and exercise. Generally speaking, thrill-seeking at fast speeds would not be an appropriate activity in National Park System units. This issue is also addressed in the trail sustainability discussion of this rule and through NPS service-wide requirements in paragraph (g)(1) and state requirements (where a state has laws that regulate bicycle use) adopted in paragraph (g)(2).

9. *Comment:* All existing hiking trails should also be designated for bicycle use in order to spread out the amount of traffic on certain trails.

Response: This rule implements procedural changes to the process by which bicycle trails may be authorized. For a number of reasons, including safety and visitor conflicts, all existing hiking trails are not appropriate for bicycle use. As the rule provides, whether an existing trail is appropriate for such use is best determined through an impact analysis of the activity as part

planning and environmental compliance on a park-specific, trail-specific basis.

Policy and Compliance Issues

10. *Comment:* Bicycle use should be allowed in Wilderness Areas and will not affect their wilderness qualities.

Response: Section 2(a) of the Wilderness Act states:

> In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.

Section 4(c) of the Wilderness Act generally prohibits mechanization within designated wilderness areas, stating that "there shall be * * * no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, [and] no other form of mechanical transport. * * *" The Wilderness Act emphasizes that mechanization, including mechanical transport, is not compatible with wilderness qualities and is contrary to preservation of the wilderness character of an area. As a result, the use of bicycles is already prohibited by law in wilderness areas.

11. *Comment:* In order to comply with section 6.4.3.3 of NPS Management Policies, the NPS should revise the proposed rule to clarify that bicycle use is prohibited in eligible, studied, proposed, recommended, and designated Wilderness Areas.

Response: The NPS will continue to prohibit bicycle use in eligible, study, proposed, recommended, and designated wilderness areas as a matter of NPS policy. In accordance with Section 6.3.1 of NPS Management Policies 2006, all categories of wilderness, including eligible, study, proposed, and recommended wilderness, will be managed with the same level of protection and under the same requirements as designated wilderness, unless specifically waived or modified in writing by the Secretary, the Assistant Secretary, or the Director.

12. *Comment:* The proposed rule has no rational basis and it discriminates against bicycle use by presuming with no scientific justification that bicycle use has a greater potential to cause adverse resource impacts than heavy animals like horses or pack stock.

Response: Similar to other uses in parks, bicycle use does have impacts on resources and other visitor activities that must be considered before allowing the use. Bicycle use also has different types of impacts in park areas (such as safety concerns as a result of speed differential) than horses and pack stock. Conflicts between various user groups, including conflicts between hikers and equestrians, hikers and bicyclists, equestrians and bicyclists, and between bicyclists and other bicyclists, are well documented in social-scientific studies and were well represented in the public comments submitted on the proposed rule. See Federal Highway Administration Report Number PD–94–031 (Moore 1994).

This rule addresses visitor use conflicts by requiring that an existing trail cannot be designated for bicycle use unless it is determined that there will be no significant impacts, including impacts to visitor safety. The final rule also requires that "safety considerations [and] methods to prevent or minimize user conflicts" be considered as part of the planning process in paragraph (d)(1)(ii).

13. *Comment:* Publication in the **Federal Register** is not an adequate means of notifying the public. The NPS should proactively notify interested members of the public by email and USPS, in addition to notification in local newspapers.

Response: The NPS agrees that notice in the **Federal Register** is not the only approach to reach interested members of the public. The NPS policy for NEPA compliance encourages parks to use various other methods of notifying the public, including creating mailing lists of interested persons, publication in local newspapers, and the use of new media.

For NEPA compliance, the NPS guidelines for public involvement require an early and open process to determine the scope of environmental issues and alternatives to be addressed in an EA or EIS. EAs are sent out for review by the interested and affected public, including affected agencies and tribes, for a minimum of 30 days. The notice that an EA is available for review will be published in a visible location in the local newspaper of record and posted on the NPS Web site. Publication in the **Federal Register** may also be appropriate and will be considered by superintendents on a case-by-case basis. Public notice is also accomplished by mail and anyone may request a copy of the EA or EIS for specific bicycle trail designations in park units. If you are interested in actions taking place in a particular park, you can inform the park that you would like to be notified of any proposed action or any environmental impact analysis that might be prepared for that area. The NPS requires that draft EISs be available for public review for a minimum of 60 calendar days from the day the Notice of Availability (NOA) is published in the **Federal Register**.

In the final rule, the NPS has retained the requirement in the proposed rule that an EA be open for public comment for a minimum of 30 days. In a change from the proposed rule, the NPS will not require that the availability of the EA be published as a notice in the **Federal Register**. The NPS will instead adhere to its existing guidelines for public notice of the availability of an EA. The final rule also retains the requirement in the proposed rule that, when rulemaking is not required, a NOA of the superintendent's written determination be published in the **Federal Register** with a 30-day public comment period. It is our intent that this procedure should function similar to the period of public comment provided for in rulemaking.

14. *Comment:* By allowing increased bicycle use in the parks, the proposed rule violates the conservation mandate of the Organic Act "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Response: The final rule clearly provides that bicycle use may be allowed on existing trails only if the NPS has determined that there will be no significant impacts to natural and cultural resources and visitor enjoyment. This rule provides protection for resources and values through more uniform and improved planning and NEPA procedures before a bicycle trail designation. The NPS agrees that it cannot take any action that would impair park resources in violation of its 1916 Organic Act. Accordingly, a non-impairment determination would be necessary before any trail could be designated for bicycle use.

15. *Comment:* Government-to-government consultation with tribes is required and cannot be satisfied by determining that tribes will not be affected by the proposed rule.

Response: This rule implements procedural changes to the methods by which bicycle routes are authorized at individual park areas and does not make any changes to consultation requirements. The Council on Environmental Quality (CEQ) regulations implementing NEPA require agencies to contact affected Indian tribes and provide them with opportunities to participate at various stages in the preparation of an EA or EIS. The

Secretary of the Interior's Order No. 3317 (December 1, 2011) requires meaningful consultation early in a planning process. The National Historic Preservation Act requires consultation with Indian tribes regarding places of traditional religious and cultural significance within the area potentially affected by a proposed project activity or program. Consultation is also required with tribes on the effects to historic and sacred places on federal land. Should a park's proposal to authorize bicycle use trigger consultation, the affected tribe(s) will be consulted.

16. *Comment:* The proposed rule is subject to a categorical exclusion under NEPA and does not require an environmental review rising to the level of an EA or EIS.

Response: We agree. This regulation has been determined to be categorically excluded under 43 CFR 46.210(i). No extraordinary circumstances have been found under 43 CFR 46.215.

17. *Comment:* The proposed rule should require that the NPS comply with NEPA before designating any trails for bicycle use.

Response: We agree. The proposed rule and the final rule require that NEPA compliance be completed through an EA or an EIS evaluating bicycle use on trails within the park unit, including the specific trail(s) being considered, before the trail may be designated for bicycle use.

18. *Comment:* Performing NEPA analysis concurrently with the process of accepting public comments is illegal and inappropriate. The NPS should reopen the public comment period for the proposed rule after NEPA analysis is made available for review by the public.

Response: The rulemaking process is governed by the Administrative Procedure Act, and the impact analysis process is governed by NEPA. Nothing in either statute prohibits the NPS from analyzing the impacts of a proposed rule concurrently with consideration of public comments on that proposed rule. The NPS has conducted NEPA analysis subsequent to receiving and analyzing comments on the proposed rule and determined that the final rule is categorically excluded from NEPA under 43 CFR 46.210(i).

19. *Comment:* The rationale for requiring rulemaking for opening existing backcountry trails to bicycle use applies today as it did when the existing rule was published in 1987. The NPS should keep the current rule to ensure transparency and public engagement in the rulemaking process. The process set forth in the existing rule is workable and should be maintained instead of the proposed rule which would impose additional requirements upon the parks. The requirement of a special regulation in the existing rule provides a needed safeguard against damage to natural resources.

Response: Whether or not bicycle use is an appropriate activity in a unit of the National Park System, and if so on what trail(s), should be considered through an individual park's planning process. Parks can accomplish this either in a specific plan for bicycle use in the park or as part of another plan, such as a recreation use plan. The designation of bicycle use on any particular trail should ideally be considered as part of a comprehensive plan for trail use in a park area, which also involves environmental compliance and input from the public. This rule requires bicycle use planning as part of the authorization process. The NPS believes that the rule achieves a primary benefit of the special regulations process—public notice and comment—by providing two opportunities for public input, while eliminating the time consuming procedural requirements of the rulemaking process when designating existing trails with no significant impacts for bicycle use. The NPS would continue to require the promulgation of special regulations for bicycle trails involving new trail construction outside developed areas.

Park Planning and Management of Bicycle Use

20. *Comment:* The NPS should require the purchase of a permit or season pass for bicycle use and use the receipts for trail maintenance. Permits would help keep bicycle riders on designated trails and reduce impacts to sensitive areas.

Response: Bicycle riders will pay entrance fees in those parks that have an established entrance fee. Entrance fees are often used to support trail construction and maintenance. The NPS does not believe establishing a uniform, nationwide bicycle permit and fee in this rule is appropriate. Consideration of such a fee may or may not be appropriate at an individual park area and could be considered as a part of that area's planning process.

21. *Comment:* The proposed rule transfers too much discretion and decision-making authority to park superintendents which will lead to a loss of uniformity in the way bicycle trails are designated and managed. This could result in adverse consequences as superintendents are vulnerable to political pressure and local pressure which lead to decisions which are not in the best interests of the American taxpayer and the National Park System.

Response: The proposed rule required a more uniform and improved bicycle use planning and NEPA compliance (EA or EIS) with public notice and comment, including review and approval by the respective NPS Regional Office. In response to public comment, the final rule adds a requirement that, before implementing a decision to designate a trail for bicycle use, the respective Regional Director must approve in writing the superintendent's written determination that bicycle use on the specific park trail(s) is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations, and management objectives, and will not disturb wildlife or park resources. Except for new trails outside of developed areas where rulemaking is required, notice of the written determination must be published in the **Federal Register** with an opportunity for public review and comment for at least thirty (30) days. Following review of the comments, the respective Regional Director may consider approving the determination. If the determination is approved, then the superintendent would be authorized to designate the trail(s) for bicycle use. The appropriate NPS Regional Director may instead decide that bicycle use on a trail is not consistent with the resources, values, and purposes of the park area and withhold approval—in which case bicycle use would be prohibited.

22. *Comment:* The NPS should use the recently published "Guide to Sustainable Mountain Trails: Assessment, Planning & Design Sketchbook, 2007 Edition" as the trail planning and design tool for mountain bike trails. This would significantly improve achievement of sustainability (minimum impact to natural and cultural resources) and the least cost over the long term. Proposed design and construction techniques should be transparent and open to public review and comment.

Response: We agree. The NPS supports and encourages the use of the Sketchbook (2007) as a guide for assessing, planning, designing, and implementing trails with minimum impact to natural and cultural resources at a lower cost for all trails in National Park System units. The Sketchbook (2007) and other resources are available online at the NPS Sustainable Trails page at *http://www.nps.gov/dsc/trails.htm*.

The Sketchbook (2007) presents a rational and sensible process for: Assessing existing trails for sustainability criteria; planning,

establishing and designing new trails; and maintaining, rehabilitating and armoring trails to bring them up to sustainable condition. The Sketchbook (2007) builds upon the language of RM #77, which defines sustainability of natural surface trails, and explains the purpose and means of achieving it. Using the Sketchbook (2007) as the trail planning and design tool reference for backcountry trails would significantly improve sustainability (minimum impact to natural and cultural resources) at a lower cost over the long term. The Sketchbook (2007) was written for use by trail planners for use on all trails, not just hiking and equestrian trails, and principles in the Sketchbook (2007) can be applied to create new backcountry bicycle trails or to adapt existing hiking and equestrian trails for bicycle use. Graphics in the Sketchbook (2007) support and illustrate the concepts presented.

The interdisciplinary team for each park or trail project should apply the NPS sustainable trail principles and guidelines generally, but sufficiently so that the proposed design and construction techniques can be available for comment as a part of the NEPA process. The Sketchbook (2007) shows a hierarchy for design solutions on page 51, which can be a starting point for the interdisciplinary team when developing alternatives. The NPS will continually look for best ideas and best practices to promote sustainable trail design and maintenance.

23. *Comment:* The proposed rule should include requirements for monitoring and evaluating the resource impacts and visitor use conflicts caused by opening trails to bicycle use. Monitoring records should be open to the public upon request.

Response: The final rule requires that planning for bicycle use includes the consideration of methods for protecting natural and cultural resources. Monitoring for resource impacts is a key component of this requirement. NPS monitoring records are generally open to the public and available on request.

24. *Comment:* The proposed rule should be abandoned because the NPS does not have the funding and staff needed to effectively enforce, monitor, and maintain the designation of additional trails for bicycle use. Accordingly, the NPS will not be able to meet the needs of public safety and protect natural and cultural resources. The NPS should evaluate the costs of implementing the proposed rule, particularly of rescue and medical response, which is necessary for visitor access to the backcountry. Mountain bike damage in parks costs taxpayers and agencies thousands of dollars per year in additional policing and repairs.

Response: This rule changes the process for authorizing bicycle trails at individual parks. Issues such as funding, staffing, costs, monitoring, enforcement, and emergency medical services, and whether it is provided by the NPS or others, are best resolved through planning and impact analysis on a park-specific, trail-specific basis. The rule's planning requirements ensure that these issues will be analyzed. The NPS recognizes that trails require maintenance and policing; however, bicycle use does not necessarily significantly increase costs for maintenance or ranger services if the trails are well planned and constructed. The NPS will not approve any bicycle use that cannot be properly managed.

The NPS Office of Public Health data from Golden Gate National Recreation Area (2004–2011), a National Park System unit that allows bicycling on park roads and also on backcountry trails, recorded 445 biking accidents. On-road accidents accounted for 90 percent of the total; off-road (mountain) biking 5 percent; and 5 percent were unspecified. Of the road accidents, 20 percent were with rented bicycles.

25. *Comment:* The proposed rule should stipulate that where two or more parks share one or more common boundaries (e.g., federal and state), all of the adjoining park units must agree before bicycle use is allowed in that area.

Response: The NPS generally agrees, but believes this situation will only arise in a very limited number of circumstances. Section 8.1.2 of NPS Management Policies 2006 requires that the NPS "coordinate with appropriate state authorities regarding activities that are subject to state regulation or to joint federal/state regulation." The rule's planning requirements will ensure that, where it exists, the issue will be considered.

26. *Comment:* The proposed rule does not require comprehensive recreation planning and there are no existing NPS planning standards for the development of such plans.

Response: This final rule establishes minimum requirements for bicycle use planning. The current regulations simply require promulgation of a special regulation to allow bicycle use on existing or new trails outside of a developed area. This revision requires that not only must bicycle use on trails be addressed in a planning document which will evaluate key planning criteria (such as sustainable trail design, lifecycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, and integration with commercial services and alternative transportation systems (if applicable)), bicycle use must also be addressed by a site-specific NEPA analysis.

Structure and Clarity of Proposed Rule

27. *Comment:* Section 4.30(e) of the proposed rule suggests that existing trails are presumed to be open to bicycle use unless and until a superintendent closes them pursuant to 36 CFR 1.5 and 1.7. The proposed rule should be revised to clarify that bicycle use on existing or new trails will not be permitted unless and until the requirements of 36 CFR 4.30 are met.

Response: That was not the intent, and in the final rule the NPS has added the phrase "[b]efore [designating a trail for bicycle use] the superintendent must ensure that all of the following requirements [of § 4.30] have been satisfied" to paragraph (d) to clarify that designating bicycle use on existing or new trails will not be permitted unless and until the requirements of 36 CFR 4.30 are met.

28. *Comment:* The designation of new trails for bicycle use outside of developed areas should not require the promulgation of a special regulation, but instead should be treated the same as designating existing trails for bicycle use. New trails offer the greatest opportunity to mitigate environmental and social impacts.

Response: The NPS agrees that constructing new trails using sustainable principles and guidelines provides opportunities to mitigate environmental impacts adjacent to the trail and could provide separation of user groups and consequently reduce conflicts. Nevertheless, constructing trails in undeveloped areas of a park can have significant impacts and result in significant long-term modification in the resource management objectives of a park area. Accordingly, the NPS believes that new trails for bicycle use outside of developed areas should continue to be authorized only through special regulations.

29. *Comment:* The proposed rule could allow bicycle use on a new trail outside of developed areas without a special regulation. This could happen if a new trail is initially designated for non-bicycle uses only (e.g., hiking) and then, once built and deemed an existing trail, is designated also for bicycle use. This loophole should be closed.

Response: Although the commenter is correct that a special regulation may not be required in such circumstances, we believe that the process required under the regulations remains fully protective

of park resources and will fully engage the public in any decision to designate such a trail. A decision to build a new trail for any non-biking purpose (e.g., hiking) would still have been subject to appropriate NEPA compliance. Later, if a designation of that trail for bicycling use is to be made, this regulation requires specific bike use planning, compliance with NEPA (including public notice and comment), and a written determination that park resources will be protected (including public notice and comment) by the superintendent and approved by the respective Regional Director. To the extent the commenter is suggesting that some park officials might seek to utilize such a process to avoid the rulemaking requirement, although we believe that is unlikely, the required processes will ensure that the public is fully engaged and the potential for controversy as a result is itself a check on any such misuse. Accordingly, we have declined to adopt this recommendation in the final rule.

30. *Comment:* The proposed rule should provide guidance on what types of uses would trigger federal rulemaking under the criteria set forth in 36 CFR 1.5(b).

Response: In a change from the proposed rule, the NPS does not intend 36 CFR 1.5(b) to apply to the designation of trails for bicycle use under 36 CFR 4.30, and has accordingly deleted the reference to 36 CFR 1.5(b) in the regulatory text. The final rule authorizes designation of existing trails without rulemaking, if the enhanced planning and compliance requirements have been met, including public notices and opportunities for public comment, and if there are no significant impacts. The NPS believes that this requirement, in addition to a written determination that bicycle use on the trail is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources, make the application of 36 CFR 1.5 to the designation of bicycle use on existing trails repetitive and unnecessary.

31. *Comment:* The proposed rule should include a definition of "administrative road" and distinguish between administrative roads within and outside of developed areas. Designation of bicycle use on administrative roads which are closed to the public and outside of developed areas should require public comment and a decision according to NEPA. The proposed rule should state that administrative roads are closed to bicycle use until opened.

Response: The rule defines administrative roads as "roads closed to motor vehicle use by the public, but open to motor vehicle use for administrative purposes" (e.g., service roads, fire roads). The rule provides that administrative roads may be designated for bicycle use following a determination by the superintendent that such bicycle use is consistent with protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources. Once the rule is effective, administrative roads are closed to bicycle use unless opened. Opening an administrative road to bicycle use requires compliance with NEPA, although under some circumstances a categorical exclusion may apply. The NPS does not see a need to distinguish between administrative roads within and outside of developed areas for the purpose of allowing bicycle use. Roads wide enough to accommodate vehicular traffic are generally capable of safely accommodating multiple non-motorized user groups, and this must be specifically determined by the superintendent in writing prior to designating administrative roads for bicycle use.

32. *Comment:* The proposed rule should be amended to clarify that designations can only be made after completion of the park planning document referenced in paragraph (b)(1) and both of the 30-day public review and comment periods referenced in paragraphs (b)(2) and (3).

Response: The NPS agrees and has made this change. The NPS intended the proposed rule to require completion of the steps in paragraphs (b)(1)–(3) before designation could occur. In the final rule, the NPS has split the requirements of proposed paragraph (b)(3) into (d)(3) and (d)(4)(i), and has added the phrase "[b]efore [designating a trail for bicycle use] the superintendent must ensure that all of the following requirements [of § 4.30] have been satisfied" to paragraph (d) to clarify that bicycle use on existing or new trails will not be permitted unless and until the requirements of 36 CFR 4.30 are met.

33. *Comment:* The proposed rule should be amended to clarify that the EA or EIS required under paragraph (b)(2) be performed on a trail-specific (not park-wide) level.

Response: The final rule (now at paragraph (d)(2)) requires that an impact analysis must be conducted on bicycle use in the park as well as on the specific trails proposed to be designated for bicycle use. The NPS declines to limit the scope of the impact analysis to only those trails considered for bicycle use, as a broader analysis may be required to address indirect and cumulative impacts, and avoid segmentation of an action. For example, a park plan and associated NEPA document may consider bicycle use among a wider range of visitor uses, which would require an impact analysis beyond that suggested by the commenter.

34. *Comment:* The 30-day public review and comment period after the issuance of an EA under paragraph (b)(2) should be eliminated. This is duplicative with the 30-day public review and comment period in paragraph (b)(3) which is sufficient.

Response: The first opportunity for public comment on the EA, in the final rule at paragraph (d)(2), is important and appropriate for this regulation. The CEQ regulations require the NPS to involve environmental agencies, applicants, and the public, to the extent practicable, in preparing EAs. Moreover, the NPS encourages the public to use this opportunity to make thoughtful, rational suggestions on the impacts and alternatives in the EA. Some of the most constructive and beneficial interaction between the public and the NPS occurs when citizens identify or develop other reasonable alternatives or mitigation strategies that the agency can consider and evaluate in the EA process. The second opportunity for public comment provided by this rule in paragraph (d)(4)(i), follows release of the superintendent's written determination that bicycle use is consistent with the resources, values, and purposes of the park area. Similar to the period of public comment allowed for in rulemaking, it gives the public an opportunity to comment on the agency's decision to implement the bicycle use plan before the decision is made final.

In response to public comment, the final rule has eliminated the requirement for publication of a **Federal Register** notice announcing the first 30-day opportunity for public comment on the EA. The NPS will instead follow its policy guidelines that encourage a variety of other notification methods. However, because the written determination process is an alternative to special regulation rulemaking, the NPS will retain the **Federal Register** notice requirement to announce the second 30-day opportunity for public review and comment on the determination.

Socioeconomic Impacts

35. *Comment:* The proposed rule will improve opportunities for biking in the

parks which will increase park visitation and provide economic benefits to the parks and nearby communities.

Response: This rule changes the methods by which bicycle trails are authorized at individual park areas. It does not actually designate a bicycle trail in any park. Nevertheless, this rule will generate positive benefits through procedural specificity and clarity and improved management of bicycle use within parks.

36. *Comment:* The proposed rule will increase bicycle use in the parks. This will have a negative economic impact as parks will lose revenue from hikers and equestrians who will visit other areas where they can enjoy the outdoors safely and in solitude, without interference from mechanical devices.

Response: According to a U.S. Forest Service study. "Updated Outdoor Recreation Use Values on National Forests and Other Public Lands." General Technical Report PNW–GTR–658. U.S. Department of Agriculture, Forest Service (Loomis, J. 2005.), the net economic benefits of mountain biking generally exceed those of either hiking or horseback riding. Nevertheless, the rule provides that new bicycle use on existing trails can be designated only if there will be no significant impacts, including impacts to visitor safety and user conflict. Therefore, any increased bicycle use resulting from this rule can only happen if the park determines that the designation of bicycle use will not impose significant impacts on other users, including hikers and equestrians.

Changes From the Proposed Rule

After taking the public comments into consideration and after additional review, the NPS made the following changes in the final rule:

36 CFR 4.30 paragraph in the final rule	Substantive changes from the proposed rule in the final rule
(a)	No change.
(b)	Provision regarding administrative roads moved from (d) to (b); superintendent's determination required instead of 36 CFR 1.5 to designate for bicycle use.
(c)	Reserved.
(d)	Provision regarding existing trails moved from (b) to (d); reference to 36 CFR 1.5 deleted.
(d)(1)	Minimum requirements for plan established.
(d)(2)	Requires evaluating the effects of bicycle use on specific trail(s); FEDERAL REGISTER notice requirement deleted.
(d)(3)	Requirement of superintendent's determination moved from (b)(3).
(d)(4)	Introductory text added.
(d)(4)(i)	30-day public review and comment of superintendent's determination moved from (b)(3); no significant impact required; and Regional Director must approve determination by superintendent for designation.
(d)(4)(ii)	Requires statement documenting bicycle use cannot be authorized when there may be significant impacts.
(e)	Provision regarding bicycle use on new trails moved from (c) to (e); NPS sustainable trail guidelines required.
(e)(1)	Consolidated requirements from (c)(1) and (c)(2)(ii); clarified requirements for constructing new trails in parks' developed areas.
(e)(2)	Consolidated requirements from (c)(1) and (c)(2)(i); clarified requirements for constructing new trails outside of parks' developed areas.
(f)	Superintendents given separate authority from 36 CFR 1.5 to impose or terminate closures, restrictions or conditions.
(g)(1)	Clarified applicability of Part 4 on roads and trails; adds § 4.15 exception.
(g)(2)	Consolidates (f) and authority of 36 CFR 4.2 to clarify that state bicycle laws apply.
(h)(1)	Clarified that off-road bicycling is prohibited unless authorized; implicit in proposed rule, explicit in existing regulation at 36 CFR 4.30(a).
(h)(2)–(5)	Renumbered as (h)(2)–(5) from (g)(1)–(4); no other changes.
(h)(6)	Specifies that violations of state law are prohibited.

Compliance With Other Laws and Executive Orders

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 (RFA)

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report titled, "Benefit-Cost/Unfunded Mandates Act Analysis, Small Business and Regulatory Flexibility Act Analysis" (U.S. Department of the Interior, National Park Service, Environmental Quality Division) available on-line at: *http://www.nature.nps.gov/socialscience/docs/RegulatoryAnalyses2012.pdf.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based on information contained in the report titled "Benefit-Cost/Unfunded Mandates Act Analysis, Small Business and

Regulatory Flexibility Act Analysis" (U.S. Department of the Interior, National Park Service, Environmental Quality Division) available online at *http://www.nature.nps.gov/socialscience/docs/RegulatoryAnalyses2012.pdf.*

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The designated bicycle routes will be located entirely within NPS Units and will not result in direct expenditures by State, local, or tribal governments. This rule addresses public use of NPS lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. No taking of real or personal property will occur as a result of this rule. Access to private property located within or adjacent to National Park Service parks will not be affected by this rule, and this rule does not regulate uses of private property. Therefore, a takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Summary Impact Statement. This rule only affects use of NPS-administered lands and imposes no requirements on other agencies or governments. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175 we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule is administrative, legal and procedural in nature. The effect on tribes is too speculative for analysis at this stage, and will be evaluated later on a case-by-case basis as new bicycle trail designations are considered.

Paperwork Reduction Act (PRA)

This rule does not contain information collection requirements and a submission under the PRA is not required.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required because the rule is covered by a categorical exclusion under 43 CFR 46.210(i): "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Drafting Information

The primary author of this rule is Russel J. Wilson, Chief, Regulations and Special Park Uses, National Park Service. Michael Tiernan, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior; Michael B. Edwards, Environmental Protection Specialist, Environmental Quality Division, Planning and Compliance Branch, National Park Service; Hugh Duffy, PLA, ASLA, PMP, LEED Green Associate, Project Manager, Denver Service Center, National Park Service; and CDR Sara B. Newman, DrPH, MCP, U.S. Public Health Service, Deputy Chief, Office of Risk Management, National Park Service, also contributed.

List of Subjects in 36 CFR Part 4

National parks, Traffic regulations.

For the reasons stated in the preamble 36 CFR Part 4 is amended as set forth below:

PART 4—VEHICLES AND TRAFFIC SAFETY

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

■ 2. Section 4.30 is revised to read as follows:

§ 4.30 Bicycles.

(a) *Park roads.* The use of a bicycle is permitted on park roads and in parking areas that are otherwise open for motor vehicle use by the general public.

(b) *Administrative roads.* Administrative roads are roads that are closed to motor vehicle use by the public, but open to motor vehicle use for administrative purposes. The superintendent may authorize bicycle use on an administrative road. Before authorizing bicycle use on an administrative road the superintendent must:

(1) Make a written determination that such bicycle use is consistent with protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources; and

(2) Notify the public through one or more methods listed in § 1.7(a) of this chapter.

(c) [Reserved]

(d) *Existing trails.* The superintendent may authorize by designation bicycle use on a hiking or horse trail that currently exists on the ground and does not require any construction or significant modification to accommodate bicycles. Before doing so, the superintendent must ensure that all of the following requirements have been satisfied:

(1) The superintendent must complete a park planning document that addresses bicycle use on the specific trail and that includes an evaluation of:

(i) The suitability of the trail surface and soil conditions for accommodating bicycle use. The evaluation must include any maintenance, minor rehabilitation or armoring that is necessary to upgrade the trail to sustainable condition; and

(ii) Life cycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, methods to protect natural and cultural resources and mitigate impacts, and integration with commercial services

and alternative transportation systems (if applicable).

(2) The superintendent must complete either an environmental assessment (EA) or an environmental impact statement (EIS) evaluating the effects of bicycle use in the park and on the specific trail. The superintendent must provide the public with notice of the availability of the EA and at least 30 days to review and comment on an EA completed under this section.

(3) The superintendent must complete a written determination stating that the addition of bicycle use on the existing hiking or horse trail is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources.

(4)(i) If under paragraph (d)(2) of this section, the resulting Finding of No Significant Impact, Record of Decision (ROD), or an amended ROD concludes that bicycle use on the specific trail will have no significant impacts, the superintendent must publish a notice in the **Federal Register** providing the public at least 30 days to review and comment on the written determination required by paragraph (d)(3) of this section. After consideration of the comments submitted, the superintendent must obtain the Regional Director's written approval of the determination required by paragraph (d)(3) of this section; or

(ii) If under paragraph (d)(2) of this section, the conclusion is that bicycle use on the specific trail may have a significant impact, the superintendent with the concurrence of the Regional Director must complete a concise written statement for inclusion in the project files that bicycle use cannot be authorized on the specific trail.

(e) *New trails.* This paragraph applies to new trails that do not exist on the ground and therefore would require trail construction activities (such as clearing brush, cutting trees, excavation, or surface treatment). New trails shall be developed and constructed in accordance with appropriate NPS sustainable trail design principles and guidelines. The superintendent may develop, construct, and authorize new trails for bicycle use after:

(1) In a developed area, the superintendent completes the requirements in paragraphs (d)(1) through (d)(3) of this section, publishes a notice in the **Federal Register** providing the public at least 30 days to review and comment on the written determination required by paragraph (d)(3) of this section, and after consideration of the comments submitted, obtains the Regional Director's written approval of the determination required by paragraph (d)(3) of this section; or

(2) Outside of a developed area, the superintendent completes the requirements in paragraphs (d)(1), (2), and (3) of this section; obtains the Regional Director's written approval of the determination required by paragraph (d)(3) of this section; and promulgates a special regulation authorizing the bicycle use.

(f) *Closures and other use restrictions.* A superintendent may limit or restrict or impose conditions on bicycle use or may close any park road, parking area, administrative road, trail, or portion thereof to bicycle use, or terminate such condition, closure, limit or restriction after:

(1) Taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives; and

(2) Notifying the public through one or more methods listed in § 1.7(a) of this chapter.

(g) *Other requirements.* (1) A person operating a bicycle on any park road, parking area, administrative road or designated trail is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11, 4.14, and 4.15.

(2) Unless specifically addressed by regulations in this chapter, the use of a bicycle within a park area is governed by State law. State law concerning bicycle use that is now or may later be in effect is adopted and made a part of this section.

(h) *Prohibited acts.* The following are prohibited: (1) Bicycle riding off of park roads and parking areas, except on administrative roads and trails that have been authorized for bicycle use.

(2) Possessing a bicycle in a wilderness area established by Federal statute.

(3) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector that is visible from at least 200 feet to the rear.

(4) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(5) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

(6) Any violation of State law adopted by this section.

Dated: June 20, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–16466 Filed 7–5–12; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0144; FRL–9695–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Maryland State Implementation Plan (SIP) submitted by the State of Maryland, through the Maryland Department of the Environment (MDE), on February 13, 2012. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. EPA is also approving this revision as meeting the infrastructure requirements relating to visibility protection for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS.

DATES: This final rule is effective on August 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0144. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the state submittal are

available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814–2037, or by email at *lewis.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On February 28, 2012 (77 FR 11839), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of Maryland's Regional Haze Plan for the first implementation period through 2018. The formal SIP revision (MDE SIP Number 12–01) was submitted by the State of Maryland on February 13, 2012. EPA proposed to approve this revision since it assures reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas for the first implementation period. EPA also proposed to approve this SIP revision as meeting the infrastructure requirements of section 110(a)(2)(D)(i)(II) and (a)(2)(J) of the CAA, relating to visibility protection for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

II. Summary of SIP Revision

The revision includes a long term strategy with enforceable measures ensuring reasonable progress towards meeting the reasonable progress goals for the first planning period through 2018. Maryland's Regional Haze Plan contains the emission reductions needed to achieve Maryland's share of emission reductions agreed upon through the regional planning process. Other specific requirements of the CAA and EPA's Regional Haze Rule (RHR) [1] and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. Timely adverse comments were submitted on EPA's February 28, 2012 NPR. A summary of the comments and EPA's responses are provided in Section III of this document. As discussed more fully in the Response to Comments below, EPA is also clarifying herein its approval of the BART determinations for sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM) for Unit 25 at the NewPage Luke Pulp and Paper Mill located in Allegany County in Luke, Maryland (NewPage Luke Mill) which we are approving into the Maryland SIP.

III. Summary of Public Comments and EPA Response

EPA received a number of comments on our proposal to approve Maryland's Regional Haze SIP submittal. Comments were received from the Luke Paper Company and the U.S. Forest Service. A joint letter from the Sierra Club and the National Parks Conservation Association (NPCA) was also received. The U.S. Forest Service acknowledged the work that the State of Maryland has accomplished and encouraged the State of Maryland to continue to reduce regional haze. The complete comments submitted by all of the aforementioned entities (hereafter referred to as "the Commenter") are provided in the docket (EPA–R03–OAR–2012–0144) for today's final action. A summary of the comments and EPA's responses are provided below.

Comment 1: The Commenter recommended that emission controls for a coal cleaning facility and three electric generating units (EGUs) which are not BART subject sources in Maryland should be evaluated under the reasonable progress provisions of the RHR as was done in Wyoming and North Dakota. The Commenter stated that initially the coal cleaning facility was identified as BART-eligible and modeling for this source demonstrated that it may impact visibility at one or more Class I areas located in West Virginia (e.g., Dolly Sods Wilderness Area and Otter Creek Wilderness Area.) This source was subsequently found not to be subject-to-BART.

Response 1: EPA finds Maryland's decision not to further evaluate controls at the coal cleaning facility and the three EGUs under the reasonable progress provisions of the RHR to be reasonable. First, as discussed in the NPR, two of the EGUs are subject to Maryland's Healthy Air Act (HAA) [2] which requires significant emission reductions at those EGUs. More generally, as explained below, Maryland followed a specific strategy for addressing reasonable progress. Pursuant to EPA's Guidance for Setting Reasonable Progress Goals under the Regional Haze Program (Reasonable Progress Guidance), states may identify key pollutants and source categories for the first planning period.[3] The regional planning organizations VISTAS and MANE–VU and the State of Maryland determined that the key pollutant which contributes to visibility impairment in the VISTAS and MANE–VU Class I areas is sulfate. Therefore, in accordance with EPA's Reasonable Progress Guidance,[4] VISTAS, MANE–VU and Maryland focused on SO_2 for the first planning period. To ensure reasonable progress for the first planning period, MANE–VU recommended and Maryland agreed to pursue the following emission reductions: Timely implementation of BART; 90 percent reduction in SO_2 emissions from the 167 highest visibility impacting EGUs; a reduction in the sulfur content of distillate and residual oil; and continued evaluation of other emission reduction strategies. Section III.B.4. of the NPR discusses how Maryland met the 90 percent reduction in SO_2 emissions from the 167 highest visibility impacting EGUs and the equivalent reduction to account for the reduced sulfur content of distillate and residual oil. During the consultation process, Maryland provided West Virginia with the intended emission reductions resulting from their long term strategy for sources that are in the Area of Influence for Dolly Sods which included emission reductions projected to be achieved by the HAA. After review, West Virginia did not request additional emission reductions from neighboring states for the first planning period other than what has already been planned. Therefore, EPA does not agree that additional controls beyond BART and the HAA should be evaluated for these particular sources for reasonable progress.

Comment 2: The Commenter questioned the BART-eligibility of a coal cleaning facility in Maryland because Maryland originally identified this source as BART-eligible. The Commenter further noted that control technologies available in 1977 differ from those available today, so a BART analysis would be beneficial. In addition, the Commenter suggested that

[1] EPA promulgated the RHR to address regional haze on July 1, 1999 (64 FR 35714). The RHR revised existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–51.309.

[2] Md. Code Ann., Environment Title 2, Ambient Air Quality Control, Subtitle 10 Healthy Air Act, Section 2–1001–2–1005 (2012). *See also* COMAR 26.11.27.

[3] *See* Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, p. 3–1 (June 1, 2007). EPA's Reasonable Progress Guidance is also available at *www.epa.gov/ttn/caaa/t1/memoranda/reasonable_progress_guid071307.pdf.*

[4] "In deciding what amount of emission reductions is appropriate in setting the RPG, you (the State) should take into account that the long-term goal of no manmade impairment encompasses several planning periods. It is reasonable for you to defer reductions to later planning periods in order to maintain a consistent glidepath toward the long-term goals." Reasonable Progress Guidance at p. 1–4.

a permit condition to shut down the coal cleaning facility by the end of 2014 would address the Commenter's concerns because the facility indicated that it did not plan to operate beyond 2014.

Response 2: EPA disagrees with the Commenter's assertions that the identified Maryland coal cleaning facility should be subject to BART. EPA agrees with Maryland that the source was not in existence by August 7, 1977 because this source did not meet EPA's definition of "in existence" at 40 CFR 51.301. EPA did not grant approval of the coal cleaning construction application until February 23, 1978. Therefore, the coal cleaning facility was not in existence prior to 1977 and is not a BART-eligible source. Additionally, EPA disagrees that any permit requirements for shutdown are necessary or required for this particular source. The Federal regional haze program does not require existing sources to shutdown. While the facility may intend to cease operations in the near future, Maryland was not required to make such a shutdown enforceable in its Regional Haze SIP.

Comment 3: The Commenter further stated that Maryland's discussion on achievement of reasonable progress goals focused on the contribution to emission reductions of sulfur only and not NO_X.

Response 3: EPA disagrees with the Commenter's assertion that Maryland was required to focus on the contribution to emission reductions of NO_X in its Regional Haze SIP. As discussed in EPA's Response to Comment 2. VISTAS, MANE–VU, and Maryland determined that the key pollutant contributing to visibility impairment in the MANE–VU and VISTAS Class I areas is sulfate. Maryland accordingly focused on SO_2 emission reductions for the first planning period, an approach that EPA believes was appropriate given the technical analyses done by VISTAS and MANE–VU. As discussed in the NPR, the State of Maryland does not have a Class 1 area and is not required to establish reasonable progress goals such as NO_X emission reductions.

Comment 4: The Commenter recommended two different control technologies for Unit 26 at the NewPage Luke Mill that combined would reduce NO_X emissions at the Mill by 60 to 90 percent.

Response 4: Although Unit 26 at the NewPage Luke Mill is mentioned in the BART analysis done by the facility, Unit 26 is not a BART-eligible source. The owner of the NewPage Luke Mill correctly provided a BART analysis for the BART-eligible Unit 25, and Maryland determined BART for Unit 25. As discussed more fully in EPA's Response to Comments 2 and 3 above, EPA does not agree that any further controls for NO_X are needed for reasonable progress at any source at the NewPage Luke Mill at this time.

Comment 5: The Commenter stated that EPA mischaracterized the Luke Paper Company's commitment in the letter dated October 31, 2007 for BART controls at the NewPage Luke Mill. The Commenter stated that EPA noted in its NPR that Luke Paper Company committed to installing either a spray dryer absorber or a circulating dry scrubber resulting in approximately 90 percent emission reductions in SO_2 and to year round operation of the existing selective non-catalytic reduction (SNCR) control at Unit 25 for NO_X control as BART for the BART subject Unit 25 at the NewPage Luke Mill. The Commenter asserted that its October 31, 2007 letter committed to reduce emissions by 90 percent for SO_2 without specifying controls, to reduce NO_X emissions to 0.4 pounds per million British thermal units (lb/MMbtu), and to control PM emissions to 0.07 lb/MMbtu for Unit 25 at the NewPage Luke Mill on a yearly basis.

Response 5: EPA agrees with the Commenter that Maryland's Regional Haze SIP submittal and our approval of the submittal requires the NewPage Luke Mill at Unit 25 to meet BART limits of 0.44 lb/MMbtu for SO_2, a rolling 30-day emission rate of 0.40 lb/MMbtu for NO_X, and 0.07 lb/MMbtu for PM. Although Maryland's BART determination was based on the use of certain controls, BART is an emission limit. 40 CFR 51.301. In our NPR, we inadvertently suggested that the Maryland Regional Haze SIP required the use of specific controls. We agree with the Commenter that the Maryland Regional Haze SIP requires the NewPage Luke Mill to meet the BART emission limits noted above but does not require the facility to install specific controls at Unit 25 to meet these limits.

Comment 6: The Commenter stated that Maryland failed to meet the requisite demonstration that the distribution of emission reductions will be similar to that under the source-specific BART and failed to conduct dispersion modeling to show that the Maryland HAA results in greater reasonable progress toward achieving natural baseline visibility conditions in the areas protected by the RHR.

Response 6: EPA disagrees with the Commenter. EPA discussed in the NPR how Maryland's HAA was an acceptable alternative to BART for EGUs and discussed how the HAA met the requirements for a BART alternative program in 40 CFR 51.308(e)(2). EPA finds that the distribution of emission reductions in Maryland at EGUs from the HAA is comparable to and not substantially different from emission reductions under BART at EGUs. The emission reductions from the HAA are discussed in detail in the NPR. Maryland's HAA covers all of the BART-subject EGU sources and also includes two EGUs which are not BART-subject sources. With the exception of a single unit at one EGU, the Maryland HAA covers more units at each source than just BART-eligible units as illustrated in Table 5 of Section III.B.5 of the NPR.[5] The HAA does not allow facilities to obtain out-of-state emission allowances in lieu of adding pollution controls locally. All of the emission reductions pursuant to the HAA are at EGUs in Maryland which are located in the eastern portion of Maryland around Baltimore and Washington, DC in the same physical location as BART-eligible EGUs. Table 5 of Section III.B.5 of the NPR supports the conclusion that the distribution of emissions is not substantially different under the HAA than under BART because the HAA includes all of the BART sources and all of the BART-eligible units with the exception of Chalk Point Unit 3. Because the Maryland HAA includes all the BART-subject EGU sources, the distance from HAA sources to Class I areas is identical to the distance from BART-subject EGU sources to Class I areas.

EPA provided an analysis supporting emission reductions from the HAA exceeding presumptive BART in the NPR. The factors used by Maryland to develop the HAA emission limitations incorporate criteria used in the RHR as discussed in the NPR in greater detail. As discussed in Section III.B.5 of the NPR, Maryland did a comparison of HAA emission limits for 13 of the 15 units subject to the HAA which resulted in a surplus of SO_2 and NO_X reductions compared to presumptive BART because the HAA applies to more units

[5] Chalk Point Unit 3 is the sole unit at an EGU which is a BART-eligible unit *not* covered by the HAA because it is not a coal-fired EGU. However, Chalk Point Unit 3 is required to operate on natural gas during 75% of its annual heat input and is required to operate on natural gas during 95% of the ozone season heat input pursuant to a consent decree with MDE which was effective on March 10, 2011 and which has been submitted to EPA for approval into the Maryland SIP. *See* 77 FR 26438 (May 4, 2012) (providing direct final rulemaking to approve consent decree limits for Chalk Point Unit 3 into Maryland SIP). EPA expects significant reductions of NO_X, SO_2, and PM from the required combustion of natural gas instead of combustion of fuel oil at Chalk Point Unit 3. *Id.*

than BART. Because the BART-subject sources are all HAA-subject sources, the distribution of emission reductions is not substantially different than under BART. As discussed in the NPR and in Maryland's Regional Haze SIP submittal, the alternative measure (i.e., the HAA) results in greater emission reductions than BART and therefore achieves greater reasonable progress. *See* 40 CFR 51.308(e)(3). Because the distribution of emissions is not substantially different, dispersion modeling is not required in 40 CFR 51.308(e)(3).

Comment 7: The Commenter stated that Maryland has not demonstrated how the emissions reductions resulting from the Maryland HAA are surplus to those reductions resulting from measures adopted to meet other requirements of the CAA as of the baseline date of this SIP, as required by EPA's RHR and the infrastructure requirements related to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

Response 7: Because Maryland is using the HAA as an alternative to BART for its EGU BART-eligible sources as permitted by the RHR and as discussed in the NPR, EPA agrees with Maryland's analysis that emission reductions from the 13 HAA units will result in emission reductions that are surplus to the baseline date of the SIP. In promulgating the RHR in 1999, EPA explained that the "baseline date of the SIP" in this context means "the date of the emissions inventories on which the SIP relies," which is "defined as 2002 for regional haze purposes." *See* 64 FR 35742, July 1, 1999, and 70 FR 39143, July 6, 2005. Any measure adopted after 2002 is accordingly "surplus" under 40 CFR 51.308(e)(2)(iv). As discussed in the NPR, Maryland's use of the HAA (which was adopted after 2002) as an alternative to BART for EGUs is in accordance with and satisfies the requirements in 40 CFR 51.308(e)(2) for BART alternatives, including the requirement that the emission reductions be surplus to the baseline date of the SIP. The NPR also discusses how Maryland developed the emission reductions required by the HAA. EPA is not restating that analysis here.

Also, EPA's final approval of Maryland's Regional Haze SIP herein will satisfy the infrastructure requirements of CAA section 110(a)(2)(D)(i)(II) and (a)(2)(J) for the 1997 8-hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA disagrees with the Commenter's suggestion that the emission reductions from the HAA are not surplus solely because the reductions are part of Maryland's Regional Haze SIP which satisfies CAA infrastructure elements in section 110(a)(2)(D) and (J) of the CAA. Section 110(a)(2) of the CAA does not impose specific requirements on particular sources, and therefore surplus reduction is not at issue.

Comment 8: The Commenter stated that the BART analyses submitted by Constellation Energy for Wagner Unit 3 and Crane Unit 2 are deeply flawed and failed to identify correctly BART technology and BART limits for those units. The Commenter also stated that Maryland improperly compared HAA emissions to those under presumptive BART and that Maryland must redo its analysis and compare emissions reductions under the HAA to those produced by full source-specific BART analyses.

Response 8: The primary requirement, as specified in CAA section 169A, is for sources to procure, install, and operate BART. In some cases this requirement is met with an analysis of potential controls considering five factors given in EPA's RHR. EPA has interpreted this requirement to be met if an alternative set of emission limits are established which mandate greater reasonable progress toward visibility improvement than direct application of BART on a source-by-source basis. In promulgating the RHR, EPA stated that to demonstrate that emission reductions of an alternative program would result in greater emission reductions, "the State must estimate the emission reductions that would result from the use of BART-level controls. To do this, the State could undertake a source-specific review of the sources in the State subject to BART, or it could use a modified approach that simplifies the analysis." 64 FR 35742 (July 1, 1999).

In guidance published October 13, 2006, EPA offered further clarification for states for assessing alternative strategies, in particular regarding the benchmark definition of BART to use in judging whether the alternative is better. *See* 71 FR 60619. In this rulemaking, EPA stated in the preamble that the presumptive BART levels given in the BART guidelines would be a suitable baseline against which to compare alternative strategies where the alternative has been designed to meet a requirement other than BART. 71 FR at 60619; *see also* 40 CFR 51.308(e)(2)(i)(C). Maryland's analysis is fully consistent with EPA's conclusions in this rulemaking.

While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing an alternative emissions reductions scenario such as the HAA when comparing it to the BART scenario. *See* 71 FR 60619 (stating "the presumptions represent a reasonable estimate of a stringent case BART * * * because * * * they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas").

Maryland's HAA was developed to bring Maryland into attainment with the NAAQS for ozone and $PM_{2.5}$ by CAA deadlines and to reduce atmospheric deposition of nitrogen to the Chesapeake Bay and other Maryland waters. The HAA imposes limitations on SO_2, NO_X, and mercury emissions from coal-fired EGUs in Maryland. Although Maryland is also now using the HAA as an alternative to BART for its EGU BART-eligible sources as permitted pursuant to EPA's RHR (40 CFR 51.308(e)(2)), the use of presumptive limits is appropriate. EPA agrees with Maryland's analysis that emission reductions from the thirteen HAA units will result in emission reductions that will provide greater reasonable progress than would BART alone as described more fully in the NPR.

Regarding the units at H.A. Wagner and C.P. Crane, EPA notes that H.A. Wagner Units 2 and 3 and C.P. Crane Units 1 and 2 are subject to the HAA (Maryland's alternative BART program) while only C.P. Crane Unit 2 and H.A. Wagner Unit 3 are BART-eligible units. Because these additional units (as well as units at Brandon Shores and Dickerson) are covered under the HAA, significantly more emission reductions are achieved by the HAA than through application of presumptive BART as discussed in Section III.B.5 in the NPR.

Comment 9: The Commenter stated that Maryland must ensure that reasonable progress goals are set so as to put the state on the glidepath to attainment of baseline natural visibility conditions in all affected Class I areas by 2064. For at least the Dolly Sods Wilderness, the Commenter stated that it did not appear that Maryland has done so and questioned what date the Class I areas would attain.

Response 9: EPA disagrees with the Commenter. As stated in the NPR, because Maryland does not have a Class I area, it is not required to establish reasonable progress goals. However, Maryland participated in conference calls and a meeting with West Virginia during the consultation process. They discussed the sources and emissions reductions expected within the area of

influence for Dolly Sods. Subsequently, based on the planned measures in neighboring states, West Virginia decided for the first planning period not to ask neighboring states for additional emissions reductions. Previously, EPA approved West Virginia's reasonable progress goals for the Dolly Sods Class I area. *See* 77 FR 16932 (March 23, 2012). Therefore, EPA disagrees with the Commenter and confirms that no such further analysis regarding the glidepath to attainment is needed.

Comment 10: The Commenter stated that EPA lacked CAA statutory authority to allow Maryland to use the HAA as an alternative to source-specific BART.

Response 10: EPA disagrees with the Commenter regarding EPA's clear statutory authority. EPA's authority to establish non-BART alternatives in the regional haze program and the specific methodology in 40 CFR 51.308(e)(2) for assessing such alternatives have been previously challenged and upheld by the United States Court of Appeals for the District of Columbia Circuit. In the first case challenging the provisions in the RHR allowing for states to adopt alternative programs in lieu of BART, the court affirmed our interpretation of section 169A(b)(2) of the CAA as allowing for alternatives to BART where those alternatives will result in greater reasonable progress than BART. *Center for Energy and Economic Development* v. *EPA*, 398 F.3d 653, 660 (DC Cir. 2005) (finding reasonable EPA's interpretation of CAA section 169(a)(2) as requiring BART only as necessary to make reasonable progress). In the second case, *Utility Air Regulatory Group* v. *EPA*, 471 F.3d 1333 (DC Cir. 2006), the court specifically upheld our determination that states could rely on the Clean Air Interstate Rule (CAIR) as an alternative program to BART for EGUs in the CAIR-affected states. The court concluded that EPA's two-pronged test for determining whether an alternative program achieves greater reasonable progress was a reasonable one and also agreed with EPA that nothing in the CAA required EPA to "impose a separate technology mandate for sources whose emissions affect Class I areas, rather than piggy-backing on solutions devised under other statutory categories, where such solutions meet the statutory requirements." *Id.* at 1340. We do not agree, therefore, that EPA lacks statutory authority for 40 CFR 51.308(e)(2) which permits states to include in a SIP an alternative trading program that provides for greater reasonable progress than BART in place of source-specific BART.

IV. Final Action

EPA is approving a revision to the Maryland SIP submitted on February 13, 2012 by the State of Maryland through MDE that addresses regional haze for the first implementation period. In submitting the plan, Maryland also stated that the Regional Haze SIP submission meets the relevant and applicable obligations related to visibility pursuant to section 110(a)(2) of the CAA, including, but not limited to, section 110(a)(2)(D)(i)(II) and (a)(2)(J) of the CAA, for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS for Maryland. EPA has determined that the Maryland Regional Haze SIP contains the emission reductions needed to achieve Maryland's share of emission reductions agreed upon through the regional planning process. Furthermore, Maryland's Regional Haze Plan ensures that emissions from the state will not interfere with the reasonable progress goals for neighboring states' Class I areas consistent with the requirements of the visibility prong of section 110(a)(2)(D)(i)(II) of the CAA. EPA is approving this SIP revision as meeting the requirements of the regional haze program, CAA section 110(a)(2)(J),[6] and the infrastructure SIP requirements of CAA section 110(a)(2)(D)(i)(II) relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

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.

B. Submission to Congress and the Comptroller General

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

[6] CAA section 110(a)(2)(J) states that the plan must meet the applicable requirements for visibility protection. EPA would not expect the establishment of a new primary NAAQS to change the applicable visibility protection and regional haze program requirements under Part C of Title I of the CAA. Thus, EPA does not consider there to be new applicable visibility protection obligations under CAA section 110(a)(2)(J) as a result of the 1997 ozone NAAQS revision or the 1997 and 2006 p.m.2.5 NAAQS revisions. We do agree, however, that Maryland has met the requirements of CAA section 110(a)(2)(J) by submitting an approvable regional haze SIP.

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland's Regional Haze Plan for the first implementation period, through 2018 may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 13, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for the Maryland Regional Haze Plan at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Maryland Regional Haze Plan	Statewide	2/13/12	7/6/2012 [*Insert page number where the document begins*].	

[FR Doc. 2012–16417 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0598; FRL–9683–6]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Illinois State Implementation Plan, submitted on June 24, 2011, addressing regional haze for the first implementation period. EPA received comments disputing its proposed finding regarding best available retrofit technology, but EPA continues to believe that Illinois' plan limits power plant emissions as well as would be achieved by directly requiring best available retrofit technology. Therefore, EPA finds that the Illinois regional haze plan satisfactorily addresses Clean Air Act section 169A and Regional Haze Rule requirements for states to remedy any existing and prevent future anthropogenic impairment of visibility at mandatory Class I areas. EPA is also approving two state rules and incorporating two permits into the state implementation plan.

DATES: This final rule is effective on August 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0598. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Synopsis of Proposed Rule

Illinois submitted a plan on June 24, 2011, to address the requirements of Clean Air Act section 169A and the Regional Haze Rule, as codified in Title 40 Code of Federal Regulations Part 51.308 (40 CFR 51.308).

EPA published a notice of proposed rulemaking evaluating Illinois' submittal on January 26, 2012, at 77 FR 3966. This notice described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Illinois' regional haze plan. The notice provided a lengthy delineation of the requirements that Illinois intended to meet, including requirements for mandating BART, consultation with other states in establishing goals representing reasonable progress in mitigating anthropogenic visibility impairment, and adoption of limitations as necessary to implement a long-term strategy for reducing visibility impairment.

Of particular interest were EPA's findings regarding BART. States are required to address the BART

requirements for sources with significant impacts on visibility, which Illinois defined as having at least 0.5 deciview impact on a Class I area. Using modeling performed by the Lake Michigan Air Directors Consortium (LADCO), Illinois identified 10 power plants and two refineries as having sufficient impact to warrant being subject to a requirement representing BART.[1]

Seven of the power plants that were identified as being subject to the requirement for BART are addressed in one of two sets of provisions of Illinois' rules known respectively as the Combined Pollutant Standards (CPS), 35 Ill. Administrative Code 225.233, and the Multi-Pollutant Standards (MPS), 35 Illinois Administrative Code 225.293–225.299. These provisions are included in Illinois' mercury rules. These rules offer the affected utilities (Midwest Generation, Dynegy, and Ameren) a choice of limitations, either to include 1) specific mercury emission limitations effective in 2015 with no limits on emissions of sulfur dioxide (SO_2) or nitrogen oxides (NO_X) or 2) work practice requirements for installation of mercury control equipment in conjunction with limits on SO_2 and NO_X emissions. Illinois' submittal includes letters from the affected companies choosing the option that includes SO_2 and NO_X emission limits, which pursuant to Illinois' rules establishes these limits as enforceable limits. In the case of Midwest Generation, three of its power plants meet the criteria for being subject to BART, and six plants are governed by the SO_2 and NO_X limits in the Multi-Pollutant Standards. In the case of Dynegy, one of its power plants meets the criteria for being subject to BART, and four coal-fired power plants are governed by the SO_2 and NO_X limits in the (CPS). In the case of Ameren, three of its power plants meet the criteria for being subject to BART, and five coal-fired plants are governed by the SO_2 and NO_X limits in the (CPS). In the notice of proposed rulemaking, EPA proposed to conclude that the emission reductions from the (MPS) and the (CPS) would be greater than the reductions that would occur with unit-specific implementation of BART on the subset of these sources that meet the criteria for being subject to BART. Therefore, EPA proposed to find that the (MPS) and the (CPS) suffice to address the BART requirement for the power plants of these three utilities.

Illinois also developed source-specific limits to mandate BART for three additional power plants. These limits are adopted into two permits, one for Kincaid Generation's Kincaid Station and one for City Water, Light, and Power's (CWLP) Dallman Station and Lakeside Station. CWLP shutdown Lakeside Station in 2009, and the CWLP permit requires that the Lakeside Station never resume operation. Finally, Illinois found that Federal consent decrees regulating emissions from the two refineries with units subject to BART (facilities owned by ExxonMobil and Citgo) mandate control at the refineries in Illinois at least as much as would be required as BART. EPA proposed to conclude that Illinois satisfied BART requirements for the affected Illinois power plants and refineries.

As stated in the notice of proposed rulemaking, Illinois did not rely on the Clean Air Interstate Rule (CAIR) for its BART determinations. Illinois is in the CAIR region. However, it used its state rules, permits, and consent decrees to achieve emission reductions that satisfy BART. This means that Illinois is not reliant on CAIR and, thus, it has avoided the issues of other CAIR region states that relied on CAIR. For similar reasons, Illinois' satisfaction of regional haze rule requirements is not contingent on the Cross-State Air Pollution Rule (CSAPR) and thus is not affected by the stay of that rule.

II. Comments and Responses

EPA received comments from three commenters on its proposed rulemaking on the Illinois regional haze plan. These commenters included ExxonMobil, the U.S. Forest Service, and the Environmental Law and Policy Center (ELPC).

ExxonMobil comments that section 169A(b)(2)(A) requires sources to implement BART *as determined by the state* (emphasis in the original), and agrees with Illinois' and EPA's conclusion that "emission limits established by the consent decrees may be relied upon by Illinois for addressing the BART requirement for these facilities." While EPA has the responsibility to evaluate whether it believes that states have made appropriate determinations as to what restrictions constitute BART, EPA appreciates the comment supporting its position, which EPA has no reason to change, that the Federal consent decrees for ExxonMobil and Citgo adequately mandate BART for the two Illinois refineries.

The U.S. Forest Service wrote to express its appreciation to Illinois for addressing prior Forest Service comments and to express support for EPA's proposed approval of Illinois' plan.

ELPC sent extensive comments objecting that control requirements for power plants in Illinois do not suffice to meet the BART requirements and leave Illinois short of meeting reasonable progress requirements. These comments are addressed in detail in the discussion that follows.

Comment: ELPC argues that "the plain language of the Clean Air Act precludes alternatives to BART." Since the Illinois plan establishes limits that govern the collective emissions of multiple power plants owned by pertinent utilities, the plan relies on an alternative to BART as described in 40 CFR 51.308(e)(2) rather than mandating BART on a source-specific basis. ELPC states that BART at BART-eligible sources is expressly mandated in Clean Air Act section 169A(b)(2)(A). ELPC acknowledges that the Clean Air Act authorizes limited exemptions from BART, in cases which EPA determines pursuant to section 169A(c)(1) that "the source does not either by itself or in combination with other sources 'emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I federal area.'" ELPC observes that "[n]owhere in Section 169A did Congress contemplate or sanction sweeping alternative programs" such as Illinois uses to address BART for many of its BART-subject power plants "in lieu of source specific BART."

ELPC acknowledges that EPA promulgated regulations reflecting its interpretation that BART requirements may be satisfied by alternative programs, and ELPC acknowledges that "the DC Circuit Court of Appeals has upheld [these] regulations." Nevertheless, "because these [court rulings] cannot be reconciled with the plan language of the Clean Air Act," ELPC urges that "EPA should not rely on [this interpretation] to exempt Illinois from implementing BART."

Response: In several previous rules, EPA has concluded that Clean Air Act section 169A may reasonably be interpreted to provide that the requirement for BART may be satisfied by an alternative program that provides greater visibility protection in lieu of limitations that directly mandate BART for individual sources determined to be subject to the BART requirement. See 40 CFR 51.308(e), 64 FR 35741–35743 (July 1, 1999), and 70 FR 39136 (July 6, 2005).

[1] The notice of proposed rulemaking lists 10 EGUs as being subject to BART (including two facilities owned by City Water Light and Power (CWLP)) but states that only 9 EGUs are subject to BART. This is because CWLP shut down the Lakeside plant that was subject to BART in 2009.

As ELPC acknowledges, the Court of Appeals for the District of Columbia Circuit supports that interpretation, *Center for Energy and Economic Development* v. *EPA*, 398 F.3d 653, 660 (D.C. Cir. 2005) ("*CEED*") (finding reasonable EPA's interpretation of CAA section 169(a)(2) as requiring BART only as necessary to make reasonable progress), as has the Ninth Circuit, *Central Arizona Water Conservation District* v. *EPA*, 990 F.2d 1531, 1543 (9th Cir. 1993) Therefore, EPA views Illinois' approach as an acceptable means of addressing the BART requirement in section 169A.

Comment: ELPC comments that "Illinois was required, but failed, to make a BART determination for each source subject to BART in the state." ELPC lists the elements of a BART analysis that a state "*must submit*" (emphasis in original) pursuant to 40 CFR 51.308(e)(2), and ELPC states that Illinois has failed to make the BART determination based on source-specific information that EPA's regulations require. "Rather than make a BART determination for each individual source subject to BART that would be covered by Illinois' proposed alternative," ELPC objects that the state "simply compared projected emissions reductions [from the adopted restrictions] to presumptive BART emissions." ELPC comments that "[b]ecause Illinois entirely failed to use source-specific information or undertake a comprehensive five factor analysis to determine BART, its proposed Regional Haze State Implementation Plan (SIP) may not be approved.

Response: The primary requirement, as specified in Clean Air Act section 169A, is for sources to procure, install, and operate BART. In some cases this requirement is met with an analysis of potential controls considering five factors set out in EPA's regional haze rule (a "five-factor analysis"). 40 CFR 51.308(e)(1)(ii)(A). As noted above, EPA has determined that this requirement can be met by a state establishing an alternative set of emission limits which mandate greater reasonable progress toward visibility improvement than direct application of BART on a source-by-source basis.

In promulgating the 1999 regional haze regulations, EPA stated that to demonstrate that emission reductions of an alternative program would result in greater emission reductions, "the State must estimate the emission reductions that would result from the use of BART-level controls. To do this, the State could undertake a source-specific review of the sources in the State subject to BART, or it could use a modified approach that simplifies the analysis." 64 FR 35742 (July 1, 1999).

In guidance published on October 13, 2006, EPA offered further clarification for states for assessing alternative strategies, in particular regarding the benchmark definition of BART to use in judging whether the alternative is better. See 71 FR 60612. In this rulemaking, EPA stated in the preamble that the presumptive BART levels given in the BART guidelines would be a suitable baseline against which to compare alternative strategies where the alternative has been designed to meet a requirement other than BART. 71 FR at 60619; *see also* 40 CFR 51.308(e)(2)(i)(C). Illinois' analysis is fully consistent with EPA's conclusions in this rulemaking.

Nevertheless, EPA undertook further analysis comparing Illinois' strategy against more stringent definitions of BART. In brief, EPA found that the alternative restrictions imposed by Illinois can be demonstrated to provide greater emission reductions and greater visibility improvement than even very conservative definitions of BART, even without a full analysis of the emission levels that constitute BART. The demonstration is discussed below, in the context of response to comments addressing the magnitude of controls at Illinois power plants.

Comment: ELPC believes that the pertinent requirements in Illinois' plan "will not achieve greater reasonable progress toward natural visibility conditions than BART." Furthermore, "the MPS/CPS contains absolutely no requirements for specific control equipment to be installed or operated at any source subject to BART in Illinois." ELPC identifies several examples of BART units that are expected to comply with the MPS or CPS with controls that are less effective than BART-level controls. ELPC also finds it problematic that "requirements for 2017 for Ameren exceed presumptive BART requirements for NO_X at one of the three plants subject to BART, and far exceed presumptive SO_2 BART limits at *all three* (emphasis in original) Ameren plants subject to BART." ELPC raises similar concerns in relation to specified Midwest Generation (MWG) plants. For this reason, "and because Ameren and MWG need not meet even those weak requirements at their plants subject to BART, the MPS/CPS is not 'better' than presumptive BART limits."

Response: ELPC appears to misunderstand the applicable test for alternate strategies for addressing BART. In particular, ELPC appears to believe that under the alternative approach, Illinois must require BART-level controls at each unit subject to BART. In fact, the underlying principle of EPA's guidance on alternative measures is to offer states the flexibility to require less control at BART units than BART-level control, provided the states provide additional control at non-BART units that more than compensates for any degree to which control at BART units falls short of BART. Illinois is using precisely this flexibility. Irrespective of the degree to which control at individual power plant BART units may be less stringent than the limits that for those particular units would be defined as BART, Illinois is requiring control across a universe of sources that includes many sources that are not subject to BART, thereby providing reductions that under EPA's rules and BART guidelines on alternative measures can compensate for any shortfall in control at BART units.

In response to these comments, EPA conducted further analysis of whether Illinois' requirements, addressing a substantial number of sources, can be expected to provide greater reasonable progress toward visibility protection than application of BART to the more limited number of units subject to a requirement for BART. EPA's analysis did not rely on a full five-factor analysis of BART at each BART-subject unit. Instead of using presumptive limits, EPA used emission limits described in EPA's RACT/BACT/LAER Clearinghouse as being applied to new sources. These limits, namely 0.06 pounds per million British Thermal Units (#/MMBTU) for NO_X and also 0.06 #/MMBTU for SO_2, are as stringent and are probably more stringent than would generally be expected to be met at existing power plants, due to the design constraints that are sometimes inherent in controlling emissions at an existing facility.

A more complete description of EPA's analysis is provided in the technical support document being placed in the docket for this rule. Table 1 provides a summary of the results of this analysis.

TABLE 1—EMISSION REDUCTIONS MANDATED BY ILLINOIS' PLAN AND CONSERVATIVE ESTIMATES OF BART REDUCTIONS

Company	BART units	Total units	NO_X reductions (tons/year)		SO_2 reductions (tons/year)	
			IL Plan	Lowest BART	IL Plan	Lowest BART
Ameren	5	24	24,074	23,849	111,997	74,349
Dynegy	3	10	23,867	18,551	47,378	22,444
MWG	9	19	37,819	28,061	61,292	38,963
CWLP	3	3	5,375	5,560	4,875	5,619
Kincaid	2	2	16,874	18,970	12,827	15,730
Totals	22	58	108,009	94,991	238,369	157,105

This table shows that the reductions from Illinois' plan, including reductions from the MPS, the CPS, and the permits for CWLP and Kincaid Generation, provide significantly greater emission reductions, especially for SO_2 but also for NO_X, than even very conservative definitions of BART for the BART-subject units. While Illinois' limits for the CWLP and Kincaid facilities viewed individually are subject to limits at approximately presumptive levels, and thus mandate less reduction than would be mandated by conservative definitions of BART, this analysis indicates that the collective emission reductions from Illinois power plants are greater than those that would be achieved by requiring achievement of even very conservative limits at the units that are subject to a BART requirement.

An additional point to be addressed is whether Illinois' plan, achieving greater emission reductions overall than application of BART on BART-subject units, can be expected also to achieve greater visibility protection than application of BART on BART-subject units. In general, Illinois' power plants are substantial distances from any Class I area. The least distance from any BART-subject Illinois power plant to any Class I area is from Dynegy's Baldwin power plant to the Mingo Wilderness Area, a distance of about 140 kilometers. The CWLP and Kincaid facilities are in the middle of the State; for example, Kincaid Station is about 300 kilometers from the Mingo Wilderness Area. Given these distances, and given that the averaging in Illinois' plan (averaging among Illinois plants of an individual company) is only authorized within the somewhat limited region within which each utility's plants are located, a reallocation of emission reductions from one plant to another is unlikely to change the impact of those emission reductions significantly. Consequently, in these circumstances, EPA is confident that the significantly greater emission reductions that Illinois mandates will yield greater progress toward visibility protection as compared to the benefits of a conservative estimate of BART.

Comment: ELPC comments that the "MPS/CPS does not require that all necessary emissions reductions take place during the first long-term strategy for regional haze."

Response: EPA does not prohibit reductions after the BART compliance deadline (in 2017); Illinois is only required to mandate at least measures that will achieve greater reasonable progress by the BART compliance deadline. While the MPS and the CPS establish a series of progressively more stringent limits extending to 2017 and beyond, both Illinois' analysis and the EPA analysis discussed above (summarized in Table 1) evaluate satisfaction of BART requirements by considering the emission limits in effect in 2017. The conclusion of that analysis is that the reductions necessary to meet BART requirements occur by the deadline for such reductions to occur. The fact that Illinois' plan requires additional reductions after 2017 is not a shortcoming of Illinois' plan.

Comment: ELPC expects the affected utilities to use the reductions mandated here to comply with CSAPR. ELPC concludes that these reductions cannot be considered surplus and thus are not creditable for meeting BART requirements.

Response: Under 40 CFR 51.308(e)(2), the alternative measures need only be surplus to reductions from measures adopted to meet requirements of the Clean Air Act as of the baseline date of the SIP, i.e. 2002. (See 40 CFR 51.308(e)(2)(iv).) In addition, 40 CFR 51.308(e) expressly provides that the BART requirements may be met by compliance with a trading program of adequate stringency even without establishment of state-specific limits. Therefore, the existence of a trading program, and influence that the state limits have on a utility's strategy for complying with the trading program requirements, cannot be grounds for disapproving a state plan that satisfies alternative BART requirements without reliance on the trading program.

Comment: ELPC expresses a number of concerns about the BART analysis for Kincaid Station. ELPC particularly expresses concern that the company analyzes wet flue gas desulfurization for a scenario based on a relatively high sulfur Illinois coal but analyzes dry sorbent injection based on a low sulfur western coal, biasing the comparison toward a conclusion that use of the control that is least effective at removing SO_2 nevertheless achieves the lowest emissions of SO_2.

Response: EPA agrees that use of higher sulfur coal in the scenario of wet flue gas desulfurization creates a mismatch in comparing this control to the other control options. However, ELPC does not demonstrate that a more appropriate comparison would yield a different result. Indeed, given how much more expensive wet flue gas desulfurization has been estimated to be for this facility as compared to dry sorbent injection (company estimates of annualized costs of $125 million versus $25 million), EPA believes that a revised BART analysis that used the same fuel for all scenarios, and thus achieved lower emissions with wet flue gas desulfurization, would still show that wet flue gas desulfurization is not cost-effective for this facility. Therefore, EPA continues to believe that Illinois made the appropriate BART determination for this facility.

Comment: ELPC objects to the use of annual average limits, expressing concern that annual average limits allow individual days of concern to have excessive visibility impairment.

Response: EPA's BART guidance establishes presumptive averaging times of 30 days or shorter, but EPA also finds Illinois' limits to be approvable. While a limit expressed as an annual average is inherently less stringent than the same limit expressed as a 30-day average, EPA believes that Illinois provides adequate compensation in part by setting some limits below presumptive levels and in part by

limiting several units that are not subject to a BART requirement.

A useful perspective is to examine the metrics by which regional haze is evaluated. These metrics are averages of visibility across 20 percent of the days of the year, in particular across the 20 percent of days with the worst visibility and across the 20 percent of days with the best visibility. (See 64 FR 35734) Twenty percent of 365 days in a year is 73 days. Furthermore, the days that have better or worse visibility are distributed throughout the year, so that allowance of greater variability in daily or monthly emissions would not necessarily yield worse (or better) visibility. Thus, while a 30-day average limit would be better suited to assuring appropriate mitigation of visibility impairment, EPA finds Illinois' annual average limitations to be adequately commensurate with the averaging time inherent in the visibility metrics being addressed.

Another facet of the use of annual rather than 30-day or shorter averages is stringency. Given normal variability in emissions, an annual average limitation is by definition less stringent than a 30-day or shorter average limitation set at the same level. In some contexts, especially those involving short-term air quality standards, EPA would not accept an annual average limitation without a demonstration that the limitation suffices to mandate that short-term average emission levels must remain below some definable, adequate level. However, different criteria are warranted in the context of regional haze, for which the relevant emissions are the emissions on the 20 percent of days with worst visibility and the 20 percent of days with best visibility. Examining the stringency of the particular limitations that Illinois has adopted, and considering degree of variability in 73-day average emissions that might be expected with an annual average emission limit, EPA finds that Illinois' annual average limitations are sufficiently stringent to conclude that emissions on a 30-day average basis can be expected to provide the visibility improvement that Illinois is required to provide.

Comment: ELPC comments that Illinois' long-term strategy must be disapproved. ELPC expresses particular concern that Illinois' plan does not mandate emission reductions for two power plants, specifically Ameren's Joppa plant and Southern Illinois Power Company's Marion plant, which ELPC believes must be mandated "to achieve the reasonable progress goals for Class I areas affected by the state." ELPC notes that "Illinois claimed that existing or soon-to-be-implemented regulatory program"—in particular, the MPS/CPS and CSAPR—"would require sufficient emissions reductions on the 15 most significant sources so as to ensure achievement of reasonable progress goals in impacted Class I areas." ELPC acknowledges that the Joppa Plant is addressed to the extent that Ameren's plants are collectively limited under the MPS, but ELPC observes that Ameren has the choice to comply with the MPS "without making any reductions at Joppa," even though the plant has "a Q/D ratio" (dividing emissions by distance to the nearest Class I area) that is "nearly three times larger than any other evaluated source." ELPC also objects that CSAPR "also does not ensure emission reductions at either Joppa or Marion, because (1) the rule is under legal challenge, is currently stayed, and may never go into effect, (2) "does not require emission reductions at particular plants," and (3) by restricting annual emissions does not necessarily limit emissions in seasons when the most degradation in visibility may occur.

Response: Achievement of the applicable reasonable progress goals is not contingent on Illinois limiting emissions from the Joppa or Marion plants in particular. Given the distances of the sources in Illinois from affected Class I areas, the least of which is about 120 kilometers from the Joppa plant to Mingo Wilderness Area, the impact on visibility is primarily dependent on the total emission reductions and not on the geographical distribution of those reductions. That is, even if Ameren for example were to opt to control its Coffeen plant (about 240 kilometers from Mingo Wilderness Area) more than its Joppa plant, the net effect on visibility would likely be similar.

EPA recognizes that CSAPR is under challenge and is currently stayed. However, Illinois is not relying on additional reductions from CSAPR to provide its appropriate contribution toward achieving reasonable progress in visibility protection. Therefore, the litigation status of CSAPR is not germane to the approvability of Illinois' regional haze plan.

III. What action is EPA taking?

EPA is approving Illinois' regional haze plan as satisfying the applicable requirements in 40 CFR 51.308. Most notably, EPA concludes that Illinois has satisfied the requirements for BART in 40 CFR 51.308(e) and has adopted a long-term strategy that reduces emissions in Illinois that, in combination with similar reductions elsewhere, EPA expects to suffice to achieve the reasonable progress goals at Class I areas affected by Illinois.

In this action, EPA is also approving a set of rules and two permits for incorporation into the state implementation plan. Specifically, EPA is approving the following rules: Title 35 of Illinois Administrative Code Rules 225.233 (paragraphs a, b, e, and g), 225.291, 225.292, 225.293, 225.295, 225.296 (except paragraph d), and 225 Appendix A. While the rules provide the SO_2 and NO_X limits as one of two options that the affected utilities may choose between, EPA is incorporating into the SIP Illinois' submittal of letters from the affected utilities choosing the option including the SO_2 and NO_X limits, which under the approved rules makes these limits permanently enforceable. Therefore, these SO_2 and NO_X limits are state enforceable and, with this SIP approval, now become federally enforceable as well. EPA also considers the limits of the state permits and the refinery consent decrees to be enforceable. While Illinois adopted the above rules as part of a state rulemaking which mostly addressed mercury emissions, the mercury provisions are not germane to this rulemaking, Illinois did not submit the mercury-related rules, and the limited set of rules that Illinois submitted suffice to mandate the SO_2 and NO_X emission controls that are pertinent to this action.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 29, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(192) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(192) On June 24, 2011, Laurel Kroack, Illinois Environmental Protection Agency, submitted Illinois' regional haze plan to Cheryl Newton, Region 5, EPA. This plan includes a long-term strategy with emission limits for mandating emission reductions equivalent to the reductions from implementing best available retrofit technology and with emission reductions to provide Illinois' contribution toward achievement of reasonable progress goals at Class I areas affected by Illinois. The plan specifically includes regulations establishing Multi-Pollutant Standards and Combined Pollutant Standards, along with letters from the affected electric utilities establishing the applicability and enforceability of the option that includes sulfur dioxide and nitrogen oxide emission limits. The plan also includes permits establishing sulfur dioxide and nitrogen oxide emission limits for three additional electric generating plants and two consent decrees establishing sulfur dioxide and nitrogen oxide emission limits for two refineries.

(i) Incorporation by reference.

(A) The following sections of Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 225, Control of Emissions from Large Combustion Sources, published at 33 IL Reg 10427, effective June 26, 2009, are incorporated by reference:

(*1*) Subpart B: Control Of Mercury Emissions From Coal-Fired Electric Generating Units, Section 225.233 Multi-Pollutant Standards (MPS), only subsections (a), (b), (e), and (g), Section 225.291 Combined Pollutant Standard: Purpose, Section 225.292 Applicability of the Combined Pollutant Standard, Section 225.293 Combined Pollutant Standard: Notice of Intent, Section 225.295 Combined Pollutant Standard: Emissions standards for NO_X and SO_2, and Section 225.296 Combined Pollutant Standard: Control Technology Requirements for NO_X, SO_2, and PM Emissions, except for 225.296(d).

(*2*) Section 225.Appendix A Specified EGUs for Purposes of the CPS (Midwest Generation's Coal-Fired Boilers as of July 1, 2006).

(B) Joint Construction and Operating Permit: Application Number 09090046, Issued on June 23, 2011, to City Water, Light & Power, City of Springfield.

(C) Joint Construction and Operating Permit: Application Number 09050022, Issued on June 24, 2011, to Kincaid Generation, LLC.

(ii) Additional material.

(A) Letter from Guy Gorney, Midwest Generation to Dave Bloomberg, Illinois EPA, dated December 27, 2007, choosing to be subject to provisions of the Multi-Pollutant Standards that include emission limits for sulfur dioxide and nitrogen oxides.

(B) Letter from R. Alan Kelley, Ameren, to Jim Ross, Illinois EPA, dated December 27, 2007, choosing to be subject to provisions of the Combined Pollutant Standards that include emission limits for sulfur dioxide and nitrogen oxides.

(C) Letter from Keith A. McFarland, Dynegy, to Raymond Pilapil, Illinois EPA, dated November 26, 2007, choosing to be subject to provisions of the Combined Pollutant Standards that include emission limits for sulfur dioxide and nitrogen oxides.

[FR Doc. 2012–16557 Filed 7–5–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2009–0596; FRL–9691–3]

RIN 2040–AF41

Effective Date for the Water Quality Standards for the State of Florida's Lakes and Flowing Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of effective date.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an extension of the July 6, 2012, effective date of the "Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule" (inland waters rule) for six months to January 6, 2013. EPA's inland waters rule currently includes an effective date of July 6, 2012, for the entire regulation except for the site-specific alternative criteria provision, which took effect on February 4, 2011. This extension of the July 6, 2012, effective date for the inland waters rule to January 6, 2013, does not affect or change the February 4, 2011, effective date for the site-specific alternative criteria provision.

DATES: The revision to § 131.43 in this final rule is effective January 6, 2013. The effective date of § 131.43, revised on December 6, 2010 (75 FR 75805), and delayed on March 7, 2012 (77 FR 13949) to July 6, 2012, is further delayed until January 6, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OW–2009–0596. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information of which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention: Docket ID No. EPA–HQ–OW–2009–0596. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202–566–1744. 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.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, contact: Tracy Bone, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number 202–564–5257; email address: *bone.tracy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to lakes and flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in Florida.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. This table lists the types of entities of which EPA is now aware that potentially could be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen/phosphorus pollution in Florida's waters may be indirectly affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the lakes and flowing waters of Florida, may be indirectly affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in 40 CFR 131.43, which is the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On December 6, 2010, EPA's final inland waters rule, entitled "Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule," was published in the **Federal Register** at 75 FR 75762, and codified at 40 CFR 131.43. The final inland waters rule established numeric nutrient criteria in the form of total nitrogen, total phosphorus, nitrate+nitrite, and chlorophyll a for the different types of Florida's inland waters to assure attainment of the State's applicable water quality designated uses. More specifically, the numeric nutrient criteria translated Florida's narrative nutrient provision at Subsection 62–302.530(47)(b), Florida Administrative Code (F.A.C.), into numeric values that apply to lakes and springs throughout Florida and flowing waters outside of the South Florida Region. (EPA has distinguished the South Florida Region as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee.) This final inland waters rule seeks to improve water quality, protect public health and aquatic life, and achieve the long-term recreational uses of Florida's waters, which are a critical part of the State's economy.

III. Revised Effective Date

A. Rationale for Extending the July 6, 2012 Effective Date

As stated in the rule itself (75 FR 75762, December 6, 2010), the inland waters rule was originally scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 CFR 131.43(e), which took effect on February 4, 2011. On March 7, 2012, EPA published an extension of the effective date of the rule for four months to July 6, 2012 (77 FR 13497). On May 17, 2012 (77 FR 29271) EPA proposed a shorter-term extension of the July 6, 2012, effective

date in order to avoid the confusion and inefficiency that could occur should Federal criteria become effective while EPA reviews State standards for approval or disapproval under CWA section 303(c). On June 7, 2012, the State of Florida Division of Administrative Hearings ruled in favor of the State's rule, enabling the State to officially submit its package to EPA on June 13, 2012.

Extending the July 6, 2012, effective date of EPA's inland waters rule to January 6, 2013, would avoid the confusion and inefficiency that may occur should Federal criteria become effective while EPA is reviewing Florida's rule. This six-month extension will provide EPA time to review and approve or disapprove Florida's rule under CWA section 303(c). If EPA approves Florida's rule, this six-month extension will also allow EPA to request permission from the Court to finalize a further extension of the January 6, 2013, effective date for a period of time for EPA to withdraw the Federal criteria corresponding to those State criteria approved by EPA. Finally, if the Court grants EPA permission to finalize a further extension of the January 6, 2013, effective date, this six-month extension will allow EPA to actually finalize such further extension of the January 6, 2013, effective date to allow EPA to withdraw Federal criteria corresponding to those State standards approved by EPA. If EPA does not approve Florida's standards, EPA expects that its inland waters rule would become effective January 6, 2013.

Note that regarding two portions of EPA's original inland waters rule—streams and default downstream protection values (DPVs) for unimpaired lakes—the U.S. District Court for the Northern District of Florida invalidated and remanded those two portions of the inland waters rule to EPA on February 18, 2012 (*FWF* v. *Jackson*, 4:08–cv–00324–RH–WCS). EPA is preparing to propose in a separate rulemaking process numeric nutrient criteria for such streams and default DPVs.

B. Public Comment

EPA received twelve comments on the proposed extension of the July 6, 2012, effective date. One commenter noted that any extension of the inland waters rule effective date does not prevent Florida from developing protective numeric nutrient standards. This commenter provided information showing that Florida continues to experience nitrogen and phosphorus-fueled algae blooms. This commenter asserted that the sooner numeric criteria are put in place, the sooner Florida waters will be on the path to being fishable, swimmable, and drinkable. EPA agrees with the commenter that control of excess nitrogen and phosphorus is important, however, EPA is finalizing this six-month extension of the effective date to allow EPA time to review the submitted State standards (discussed earlier) for approval or disapproval under CWA section 303(c). As mentioned earlier, having EPA's criteria take effect while EPA is reviewing the State standards could cause confusion and administrative inefficiency for the State and regulated entities, something the EPA wants to avoid. The commenter also argued against granting the longer extension of one year that was discussed in the proposed rule. EPA agrees with the commenter and has finalized a six-month extension. The commenter also provided input on the submitted Florida numeric nutrient standards. Those comments are outside the scope of this rule.

The other eleven commenters supported the proposal to extend the effective date, arguing that the additional time would avoid the confusion and inefficiency that may occur should Federal criteria become effective prior to allowing full consideration of the Florida Department of Environmental Protection's (FDEP's) nutrient standards and withdrawal of Federal numeric nutrient criteria rulemakings in Florida. The commenters supported extension of the effective date by one year as discussed in the proposal rather than the proposed three-month extension. Some of these commenters also proposed that EPA extend the effective date beyond one year in case more time is needed to withdraw its Federal nutrient criteria.

EPA agrees that a longer extension than three months is warranted, but that six months is appropriate in order to provide sufficient time to allow EPA to take the actions described earlier. Therefore, based on public comment as well as the June 13, 2012, submission by Florida of its nutrient standards, EPA believes that a six-month extension is warranted.

EPA received several comments urging actions related to an EPA rulemaking under development (i.e., not the inland waters rule). These comments are outside the scope of this action and therefore EPA is not addressing them.

C. Good Cause Exemption

Section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3), provides that "[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * (3) as otherwise provided by the agency for good cause found and published with the rule." Today's final rule is a rule that relieves a restriction, i.e., that delays the effective date of a Federal rule. Today's rule does not establish any requirements but rather merely extends the effective date of already-promulgated requirements. On this basis, EPA has determined that there is "good cause" for having this rule take effect upon publication in the **Federal Register**. EPA thus finds that this constitutes "good cause" under 5 U.S.C. 553(d)(3).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), since it merely extends the effective date of an already promulgated rule, and is therefore not subject to review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not impose any information collection burden, reporting or record keeping requirements on anyone.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-

profit enterprise which is independently owned and operated and is not dominant in its field.

This final rule does not establish any requirements that are applicable to small entities, but rather merely extends the date of already promulgated requirements. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule merely extends the effective date of an already promulgated regulation.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule does not establish any requirements that are applicable to small entities, but rather merely extends the date of already promulgated requirements.

E. Executive Order 13132 (Federalism)

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the effective date of an already promulgated regulation.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. However, the rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law.

In the State of Florida, there are two Indian Tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both Tribes have been approved for treatment in the same manner as a State (TAS) status for CWA sections 303 and 401 and have federally approved WQS in their respective jurisdictions. These Tribes are not subject to this final rule. This rule will not impact the Tribes because it merely extends the date of already promulgated requirements.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in E.O. 12866 and because the Agency does not believe this action includes environmental health risks or safety risks that would present a risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (E.O.) 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This action is not subject to E.O. 12898 because this action merely extends the effective date for already promulgated requirements.

K. Congressional Review Act

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 6, 2012. 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 131

Environmental protection, Florida, Nitrogen/phosphorus pollution, Nutrients, Water quality standards.

Dated: June 28, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

Subpart D—[Amended]

■ 2. Section 131.43 is amended by revising paragraph (f) to read as follows:

§ 131.43 Florida.

* * * * *

(f) *Effective date.* This section is effective on January 6, 2013, except for § 131.43(e), which is effective February 4, 2011.

[FR Doc. 2012–16421 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 77, No. 130
Friday, July 6, 2012

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA–2012–N–0378]

Effective Date of Requirement for Premarket Approval for Shortwave Diathermy for All Other Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the class III preamendments device, shortwave diathermy (SWD) for all other uses. This device applies to the body electromagnetic energy in the radio frequency bands of 13 megahertz to 27.12 megahertz and is intended for the treatment of medical conditions by means other than the generation of deep heat within body tissues. It is not intended for treatment of malignancies. The Agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request that the Agency change the classification of any of the aforementioned devices based on new information. This action implements certain statutory requirements.

DATES: Submit either electronic or written comments by October 4, 2012. Submit requests for a change in classification by July 23, 2012. FDA intends that, if a final rule based on this proposed rule is issued, anyone who wishes to continue to market the device will need to submit a PMA or a notice of completion of a PDP within 90 days of the effective date of the final rule. Please see section XII of this document for the proposed effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–0378, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2012–N–0378 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael J. Ryan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1615, Silver Spring, MD 20993, 301–796–6283.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), and the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed by means of premarket

notification procedures (510(k) process) without submission of a PMA until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b)(1) of the FD&C Act establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the FD&C Act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing the following information: (1) The regulation, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the FD&C Act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change in reclassification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the FD&C Act. Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the FD&C Act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification of the device under section 513 of the FD&C Act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease since the device would be deemed adulterated under section 501(f) of the FD&C Act.

The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and the device does not comply with IDE regulations, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334) if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA or PDP has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The FD&C Act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the 1976 amendments states that: "[T]he thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976)).

The SMDA added section 515(i) to the FD&C Act requiring FDA to review the classification of preamendments class III devices for which no final rule requiring the submission of PMAs has been issued, and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, the SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the FD&C Act on specific devices, in the interest of public health, independent of the procedures of section 515(i). Proceeding directly to rulemaking under section 515(b) of the FD&C Act is consistent with Congress' objective in enacting section 515(i), i.e., that preamendments class III devices for which PMAs have not been previously required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

II. Dates New Requirements Apply

In accordance with section 515(b) of the FD&C Act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the Agency for class III devices within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the FD&C Act, the Agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the Agency finds that "the continued availability of the device is necessary for the public health."

FDA intends that under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which the filing of a PMA or a notice of completion of a PDP is required to be filed, the exemptions from the requirements of the IDE regulations for preamendments class III devices in § 812.2(c)(1) and (c)(2) will cease to apply to any device that is: (1) Not legally on the market on or before that

date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for a class III device is not filed with FDA within 90 days after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued under § 812.30. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the issuance of the final rule to avoid interrupting investigations.

III. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the FD&C Act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the advisory committee (panel) for the classification of these devices along with information submitted in response to the 515(i) Order (74 FR 16214, April 9, 2009), and any additional information that FDA has encountered. Additional information regarding the risks as well as classification associated with these device types can be found in the following proposed and final rules and notices published in the **Federal Register**: 44 FR 50512 (August 28, 1979), 48 FR 53032 (November 23, 1983), and 52 FR 17732 (May 11, 1987).

IV. Devices Subject to This Proposal

Shortwave Diathermy for All Other Uses (21 CFR 890.5290(b))

1. Identification

An SWD for all other uses except for the treatment of malignancies is a device that applies to the body electromagnetic energy in the radio frequency bands of 13 megahertz to 27.12 megahertz and that is intended for the treatment of medical conditions by means other than the generation of deep heat within body tissues as described in § 890.5290(a) (21 CFR 890.5290(a)).

2. Summary of Data

The Agency first proposed classification of SWD devices for use in applying therapeutic deep heat as class II devices and SWD devices for any use other than applying therapeutic deep heat as class III devices in a proposed rule issued August 28, 1979 (44 FR 50512), based on recommendations made by the Physical Medicine Device Classification Panel of 1979 (The Physical Medicine Device Classification Panel). When a comment regarding the scope of the identifications for SWD devices in this proposed rule was received, the Agency asked the Physical Medicine Device Section of the Surgical and Rehabilitation Devices Panel (the Medicine Device Section) to review these devices in December 1979. Among their recommendations, the Medicine Device Section stated that to be therapeutically effective, a SWD device must be capable of providing energy sufficient to raise the temperature of tissues below the skin to 44 °C, and recommended that SWD devices be classified into class III when used in the treatment of malignancies because insufficient data exist concerning the safety and effectiveness of the device for this use (48 FR 53032). The Agency agreed with the Medicine Device Section that insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device when it was used for any purpose other than applying therapeutic deep heat, and that insufficient information existed to establish a performance standard to provide this assurance, and finalized its classification of SWD devices for all other uses except the treatment of malignancies by means other than the generation of deep heat as class III devices (52 FR 17732). Current peer-reviewed literature suggests several risks to health for these devices (see the following section of this document), and the Agency continues to believe that there is insufficient evidence and information to determine that general controls would provide reasonable assurance of the safety and effectiveness or to establish a performance standard or special controls to provide this assurance.

3. Risks to Health

The Physical Medicine Device Classification Panel identified the following risks to health from all SWD devices: (1) Cellular or tissue injury, (2) pacemaker interference, (3) tissue necrosis (death) and burns, and (4) electrical shock. The Agency believes that these risks to health apply to SWD devices for all uses, and has also identified additional risks to health through review of peer-reviewed research and adverse event information. The Agency believes the following risks to health apply to SWD devices for all other uses.

- *Cellular or Tissue Injury:* There is uncertainty concerning the effects of electromagnetic flux on human cellular or tissue structures and functions. The cellular or tissue alterations may be induced by electromagnetic fields. The potential for and the effects of cellular changes by the electromagnetic field of the SWD device require further clinical study to show that the magnetic fields do not produce harmful effects on the cells.
- *Pacemaker Interference:* Several researchers have identified that the use of both thermal and nonthermal SWD can interfere with pacemaker function (Refs. 1 and 2). Electromagnetic fields generated by thermal and nonthermal SWD may interfere with the circuitry of a cardiac pacemaker or implantable defibrillator, which can lead to increased or decreased pacing rate, total loss of pacing, and/or cessation of pacemaker impulses.
- *Tissue Necrosis (Deqth) and Cutaneous Burns:* Excessive energy deposition into the tissue may cause excessive heating that results in tissue damage. In addition, a September 2011 review of Medical Device Reporting (MDR) and Manufacturer and User Facility Device Experience (MAUDE) databases identified two cases of burns associated with nonthermal SWD. Even though the therapeutic effect of nonthermal SWD appear to be nonthermal in mechanism, research has demonstrated that such devices do have a thermal effect and a direct correlation between pulse rate and thermal sensation exists (Refs. 3 and 4).
- Electrical Shock: Excessive leakage current could result in injury, or a malfunction of the device could result in electrical shock.
- Thermal Injury from Implanted Wire Leads and Metal Implants: Studies have shown that SWD can cause heating of implanted wire leads and presents the risk of thermal injury to patients with implanted wire leads (Refs. 5 and 6).

In a March 2003 public health notification (Ref. 7), FDA specifically warned that the danger of thermal injury can occur even when the SWD device is in non-heating mode, when the implanted device is not turned on, or when the implant has been removed

from the patient's body with the metal leads left behind.

- *Radiation Hazards:* Several researchers have expressed concern about the potential hazard from stray radiation and unintended exposure of the therapist or of non-treated areas of the patient (Refs. 8, 9, and 10). The majority of SWD units in clinical use do not have shielded leads to transmit the high frequency generated to the applicator. Most SWD units have no provision to minimize radiation loss from the applicator in directions away from the patient. Hence, if the user or operator stays near the energized SWD unit and treat several patients daily, he or she could absorb significant electric and magnetic field radiation (Ref. 8). The International Commission on Non-ionizing Radiation Protection has established limits to reduce radio frequency exposure in workers and the general public. Shields et al. (Ref. 9) studied stray electric and magnetic field strengths from 10 SWD units. Findings demonstrated that, under a worst-case scenario, emissions from SWD exceed the guidelines for operators at distances currently recommended as safe.
- *Abnormal Cell Growth:* Cellular proliferation caused by nonthermal SWD in human and rat cell lines has been reported in in vitro studies (Ref. 11).

V. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the FD&C Act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on the following: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA must include valid scientific evidence to demonstrate reasonable assurance of the safety and effectiveness of the device for its intended use (see § 860.7(c)(2) (21 CFR 860.7(c)(2))). Valid scientific evidence is "evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. * * * Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness." (§ 860.7(c)(2)).

VI. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA, and must follow the procedures outlined in section 515(f) of the FD&C Act. A PDP must provide: (1) A description of the device, (2) preclinical trial information (if any), (3) clinical trial information (if any), (4) a description of the manufacturing and processing of the devices, (5) the labeling of the device, and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought.

VII. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the FD&C Act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the FD&C Act.

A request for a change in the classification of these devices is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device.

The Agency advises that to ensure timely filing of any such petition, any request should be submitted to the Division of Dockets Management (see **ADDRESSES**) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the Agency will, within 60 days after receipt of the petition, and after consultation with the appropriate FDA resources, publish an order in the **Federal Register** that either denies the request or gives notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the FD&C Act and 21 CFR 860.130 of the regulations.

VIII. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Agency believes that the final rule will have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Need for Regulation

The SWD devices that would be affected by this rule use electromagnetic energy in radio frequency bands to treat medical conditions other than malignancies through means other than heat. The devices are regulated under

§ 890.5290(b). These are currently class III preamendments devices and can be approved through premarket notification (510(k)) submissions rather than costlier PMA or PDP applications. Devices cleared through 510(k) submissions may be subject to general and special controls designed to provide reasonable assurance of safety and effectiveness. FDA has determined that insufficient information exists to develop such controls for these devices and therefore the devices should be approved through PMA or PDP applications.

Health care providers and patients rely on FDA determinations of safety and effectiveness when making treatment decisions. An FDA finding that current premarket requirements are inadequate to establish safety and effectiveness implies that health care providers and patients have inadequate information on these devices. We expect that at least some health care providers and patients who would have used these devices will make different consumption decisions if they possess more information.

This proposed rule, should it be issued as a final rule, would require manufacturers of affected devices to file a PMA or a notice of completion of a PDP within 90 days. Under section 501 of the FD&C Act, a PMA or a notice of completion of a PDP must be filed either within 90 days of the issuance of the final rule or within 30 months after the final classification of the device under section 513 of the FD&C Act, whichever is later. Because the final classification of SWD devices occurred in 1983, the 30-month period has elapsed. If a manufacturer failed to file a PMA or a notice of completion of a PDP within 90 days of the issuance of the final rule, the device would be deemed adulterated under section 501 of the FD&C Act.

B. Benefits

The primary benefit of this rule would be the more efficient allocation of resources. We believe that health care providers and patients currently have incomplete information concerning the safety and effectiveness of these devices. This lack of information causes them to direct resources toward treatments they would not otherwise choose. Even extensive use of a medical product by physicians may not provide physicians with enough information to determine the safety and effectiveness of that product (Ref. 12).

FDA has determined that the devices regulated by § 890.5290(b) have not been shown to be safe and effective. Approval of a device through PMA procedures or PDP applications would require that safety and effectiveness be demonstrated. This demonstration of safety and effectiveness would increase the information available to health care providers and patients and enable them to allocate resources more efficiently. For example, this rule may improve the health of patients by causing resources to be redirected toward more effective treatment.

FDA has insufficient data to estimate the size of the benefits from requiring PMA or PDP applications. The size of the benefits would vary with changes in the safety and effectiveness of treatment received as well as changes in the cost of treatment. Little information is available concerning the effectiveness of these devices, making estimation of the changes in the effectiveness of treatment received difficult.

FDA does not expect the rule to result in large improvements in the safety of treatment received. FDA's MAUDE database records adverse events associated with medical devices. Few adverse events have been reported for the devices that would be affected by the rule.

C. Costs

This rule would require the manufacturers of affected devices to prepare and submit PMAs. PMA approval procedures are substantially more costly than 510(k) clearance procedures. Furthermore, those manufacturers of devices already cleared through 510(k) submissions would be required to incur the additional costs of preparing and submitting PMAs to continue marketing their devices.

The primary cost of preparing and submitting a PMA is typically the cost of clinical trials that demonstrate the safety and effectiveness of a device. These clinical trials typically cost between $10,000 and $20,000 per patient (Refs. 13 and 14). FDA estimates that the clinical trials necessary to demonstrate the safety and effectiveness of these devices would include between 50 and 150 patients. We therefore estimate that the clinical trials would cost between about $500,000 and $3 million per PMA.

In addition to the cost of conducting the clinical trials, manufacturers would incur the cost of completing and submitting the applications. We estimate that the total cost of completing and submitting an application is between 25 and 35 percent of the cost of the clinical trials (Ref. 15).

Additional costs would be incurred by FDA in reviewing any PMAs. The average cost of reviewing a PMA is estimated to be over $600,000 (Ref. 16). Part of the cost of review would be borne by manufacturers through user fees. For fiscal year 2011, the PMA user fee was typically $236,298 for large firms and $59,075 for small firms (75 FR 45641, August 3, 2010).

The total cost per PMA is therefore estimated to be between about $1.2 million and $4.7 million, with a primary estimate of $2.6 million. Not all of that cost would be a net social cost, however. A portion of the cost would be incurred as a result of the provision of additional medical care to clinical trial participants and therefore would be a transfer from manufacturers to health care providers or patients rather than a cost to society.

We are uncertain about the number of PMAs that would be submitted. A manufacturer's decision to submit a PMA for a currently marketed device would involve considering the cost of the PMA, the probability of the PMA's approval, and the profits that would be lost were the device to be withdrawn from the market. We are unaware of data for these devices that would enable us to estimate the potential loss in profits from withdrawal. While the potential loss in profits would affect the decisions of manufacturers, lost profits would not generally be net social costs. Health care providers and patients would direct their financial resources elsewhere, resulting in additional profits, consumption or savings for other entities that would offset the lost profits for manufacturers of affected devices.

FDA expects to receive one or fewer PMAs for affected devices should a final rule be issued. If one PMA were to be submitted, the total cost of preparing, submitting, and reviewing PMAs as a result of this rule would be between about $1.2 million and about $4.7 million, with a primary estimate of about $2.6 million.

D. Regulatory Flexibility Analysis

Firms involved in the manufacture of medical devices are required to register with FDA and list the devices that they produce. FDA's Establishment Registration & Device Listing database contains nine firms that registered with FDA in 2011 and listed devices that would be affected by this rule. Eight of those firms were based in the United States. The U.S. Small Business Administration (SBA) defines a business in the Surgical and Medical Instrument Manufacturing industry (NAICS code 339112) as small if it has 500 or fewer employees (Ref. 17). Seven of the eight domestic firms are small according to the SBA definition.

It is anticipated that most of the devices manufactured by these firms

would cease to be marketed if a final version of this rule were issued. Any manufacturers that remained in this market or entered in the future would be required to incur the cost of about $2 million associated with preparing and submitting a PMA. Therefore, FDA predicts that this rule would have a significant economic impact on a substantial number of small firms. This analysis together with other sections of this document serve as the Initial Regulatory Flexibility Analysis.

FDA has analyzed regulatory options that would provide regulatory relief for small business compared with this rule. The only viable alternatives to the proposed reclassification would be options involving the reclassification of affected devices from class III to class II accompanied by the implementation of general and special controls. The costs associated with reclassification to class II vary with the costs of complying with the special controls. The more extensive the special controls, the costlier would be the reclassification. FDA has not estimated the costs of various levels of stringency of special controls but all levels would be far less costly than the $2 million for a PMA.

As stated elsewhere in this document, however, FDA has determined that it has insufficient information to implement adequate general and special controls. The Agency has concluded that this rule is necessary to provide a reasonable assurance that SWD devices marketed in the United States are safe and effective for their intended use.

X. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Paperwork Reduction Act of 1995

This proposed rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 812 have been approved under OMB Control No. 0910–0078; the collections of information in part 807, subpart E have been approved under OMB Control No. 0910–0120; the collections of information in 21 CFR part 814, subpart B have been approved under OMB Control No. 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB Control No. 0910–0485.

XII. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective on the date of publication in the **Federal Register** or at a later date if stated in the final rule.

XIII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to submit 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.

XIV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

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List of Subjects in 21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 890 be amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 890.5290 is amended by revising paragraph (c) to read as follows:

§ 890.5290 Shortwave diathermy.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [date 90 days after date of publication of the final rule in the **Federal Register**], for any shortwave diathermy for all other uses (as described in paragraph (b)(1) of this section) that was in commercial distribution before May 28, 1976, or that has, on or before [date 90 days after date of publication of the final rule in the **Federal Register**], been found to be substantially equivalent to any shortwave diathermy for all other uses (as described in paragraph (b)(1) of this section) that was in commercial distribution before May 28, 1976. Any other shortwave diathermy for all other uses (as described in paragraph (b)(1) of this section) shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: June 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–16487 Filed 7–5–12; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA–HQ–OAR–2011–0887; FRL–9696–1]

RIN 2060–AN40

Draft Guidance To Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: Notice is hereby given that the EPA has posted its draft non-binding guidance titled, *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events* and associated attachments, on the agency's Internet Web site. The EPA invites public comments on this guidance document and plans to issue an updated version of the guidance after reviewing timely submitted comments. The EPA intends to hold a conference call to provide interested stakeholders with an overview of the Exceptional Events draft guidance.

DATES: Comments must be received on or before September 4, 2012. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: *Access to the draft guidance:* Please see the EPA's Web site at *http://www.epa.gov/ttn/analysis/exevents.htm* for additional details on the draft non-binding guidance titled, *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events* and associated attachments and the conference call for interested stakeholders.

Comments: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0887, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments. Attention Docket ID No. EPA–HQ–OAR–2011–0887.
- *Email: a-and-r-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2011–0887.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2011–0887.
- *Mail:* Air Docket, Attention Docket ID No. EPA–HQ–OAR–2011–0887, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue NW., Room 3334, Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2011–0887. Such deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0887. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA is unable to read your comment and cannot contact you for clarification due to technical difficulties, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section II 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Beth W. Palma, U.S. EPA, Office of Air

Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–04, Research Triangle Park, NC 27711, telephone (919) 541–5432, email at *palma.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Instructions for Submitting Public Comments

What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, email at *morales.roberto@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2011–0887.

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

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

II. Background

The purpose of this document is to solicit public comments on the EPA's recently posted draft non-binding guidance on the implementation of the March 22, 2007, Exceptional Events Rule (72 FR at 13560). These documents are available online at *http://www.epa.gov/ttn/analysis/exevents.htm* or within the associated docket, EPA–HQ–OAR–2011–0887.

The draft guidance consists of an overview document, titled *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events* and its attachments: Attachment 1, *Draft Exceptional Events Rule Frequently Asked Questions;* Attachment 2, *Draft Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule* (High Winds Guidance Document); and Attachment 3, *Request for Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule.* Together, these documents clarify key provisions and respond to questions and issues that have arisen since the EPA promulgated the *Treatment of Data Influenced by Exceptional Events; Final Rule* (72 FR at 13560), known as the Exceptional Events Rule (EER), pursuant to the 2005 amendment of Clean Air Act (CAA) Section 319.

The EPA provided previous versions of these draft guidance documents to state, local, and tribal agencies, and to other parties as requested, in May of 2011 to solicit preliminary comments. The EPA has prepared the document *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule* (the Response to Comments document), to track these preliminary comments and the EPA's responses.

During this preliminary review period, the EPA received numerous comments, some of which the EPA has incorporated into the revised draft guidance documents. For example, the EPA has added an optional prospective controls analysis process and revised the discussion of the optional High Wind Action Plan; both of these are voluntary analyses that can facilitate agreement between states/local agencies/tribes and the EPA as to what measures constitute "reasonable" controls in advance of an actual event. Once the plans have gone through a notice and comment process at the state/local/tribal level and the EPA has approved these plans, the EPA generally anticipates that they will be effective for three years. Both of these approaches are described in more detail in the revised, draft High Winds Guidance document. The EPA solicits feedback on the anticipated use and functionality of these plans. Initial commenter feedback also asked the EPA to identify timelines for steps in the exceptional event submittal and review process. In the draft guidance documents, the EPA identifies suggested review and response timeframes, and indicates willingness to work with agencies on these timeframes to the extent the mandatory timing of the EPA regulatory actions allows.

The EPA has also begun applying the principles in the draft guidance documents as we receive exceptional event submittal packages. For example, the EPA's Region 9 office worked with agencies in Arizona to incorporate approaches presented in the draft guidance documents into a consolidated exceptional events demonstration package that addresses numerous exceedances of the PM_{10} standard. The EPA hopes that, once finalized, much of the information included in this streamlined exceptional events demonstration submittal could be transferable and serve as a model for future events for both Arizona and other areas experiencing high wind dust events.

While the EPA incorporated some comments into the revised draft guidance documents, the EPA did not incorporate all aspects of commenter feedback. For example, multiple commenters suggested that Exceptional Events Rule revisions are the appropriate mechanism to implement some of the approaches described in the guidance documents. The EPA maintains that guidance documents do not change, increase, or decrease rule requirements; they assist by providing information and illustrations for better understanding of and compliance with the rule. The EPA is deferring a decision on whether to revise the Exceptional Events Rule.

Initial feedback on the draft guidance documents also raised the following questions on which the EPA is specifically seeking comment:

- The EPA has developed draft exceptional event implementation guidance with the goal of establishing clear expectations to enable affected agencies to better manage resources as they prepare the documentation required under the EER. These draft

guidance documents identify mechanisms (*e.g.*, demonstration prioritization, review time lines, High Wind Action Plans) to streamline the demonstration development, submittal, and review process. The EPA seeks comment regarding other specific, broadly applicable, streamlining mechanisms that the EPA could incorporate into the exceptional event implementation process.

- The EPA has modified the exceptional events Web site at *http://www.epa.gov/ttn/analysis/exevents.htm* to include additional links to tools, such as the DataFed Web site, that submitting agencies may use in the development of their demonstration submittals. The EPA has also posted exceptional event demonstrations that have already been reviewed and acted upon by the EPA. The EPA solicits feedback regarding other web-based information, links, tools, or methodologies that we can similarly post on our Web site.
- In the draft exceptional events guidance documents, the EPA defines the high wind threshold as the minimum threshold wind speed capable of overwhelming reasonable controls on anthropogenic sources (*i.e.*, capable of causing significant dust emissions from controlled sources) or causing emissions from natural undisturbed areas. The EPA further notes that this area-specific threshold, along with the submitter's analysis of implemented reasonable controls and other factors, helps inform the analysis of the "not reasonably controllable or preventable" criterion. The EPA intends to allow air agencies to use wind data from a multitude of sources in the development of high wind thresholds. The EPA has identified several sources of local wind speed data including the National Weather Service, the National Climate Center, and local air monitoring stations. In addition, air agencies may use models such as Fifth Generation Pennsylvania State University/National Center for Atmospheric Research Mesoscale Mode (MM5), Weather Research and Forecasting Model (WRF) and North American Mesoscale Model (NAM), to develop local wind speed data. The EPA solicits feedback on additional available sources of wind data and their applicability in informing local high wind analyses.
- As previously mentioned, demonstrations for high wind dust events necessarily include wind speed analyses. Generally, the EPA will accept that high winds could be the cause of a high 24-hour average PM_{10} or $PM_{2.5}$ concentration if there was at least one full hour in which the hourly average wind speed was above area-specific high wind threshold. Potential issues arise when determining the hourly average wind speed if wind speeds are not recorded at specified intervals throughout each hour. While some sources of wind speed data use hourly averages, other data sources employ 1–5 minute ("short-period") averages. When the available wind speed data consist of only the wind speed during a fixed short period of each hour (e.g., the first or last 5 minutes of each hour) or the wind speed during the variable short period when wind speed was at its maximum during the hour, the EPA will generally accept that the hourly average wind speed was above the threshold if the reported short-period wind speed was above the threshold. Where wind speed is recorded at specified intervals throughout each hour, agencies should use all recorded data to calculate the hourly average wind speed. AERMINUTE, a preprocessor to AERMOD that takes short-period wind speed observations and calculates an hourly average wind, can assist in this calculation. AERMINUTE data, or other sub-hourly data with a resolution equal or greater than 5 minutes, can be fed into AERMET, the AERMOD meteorological processor, to get a user-friendly output. The EPA solicits additional feedback and tools to convert 1–5 minute wind speed data to hourly averages.
- Within the EPA's Air Quality System (AQS), monitoring agencies can use two types of data validation, or data qualifier, codes: the *Request Exclusion* flags (*R*) and the *Informational Only* flags (*I*). Agencies should use the *I* series flags when identifying informational data and the *R* series flags to identify data points for which the agency intends to request an exceptional event exclusion and the EPA's concurrence. Given that the EPA can act/concur only on *R* flags, some agencies have questioned the utility of *I* flags. Do AQS users find *I* flags in AQS useful? If so, how do users employ these flags?
- In response to comments received and in an effort to streamline the development of high wind demonstrations, the EPA has added an optional "Prospective Controls Analysis" process by which states, local agencies, and tribes can voluntarily provide information on attainment status, identify natural and anthropogenic windblown dust sources and emissions, provide the status of SIP submittals (if applicable), and identify the wind speed up to which the collective windblown dust controls are expected to be effective. This optional analysis can facilitate agreement between states/local agencies/tribes and the EPA as to what constitutes "reasonable" controls in advance of an actual event. The EPA has also added an optional "High Wind Action Plan" that states/local agencies/tribes can use to document current in-place controls, document controls on new sources that need reasonable controls for future events, and/or document current and/or planned mitigation measures. Both of these approaches are described in more detail in the revised draft High Winds Guidance document. The EPA anticipates that air agencies would submit the prospective controls analysis in advance of or with a demonstration package and similarly expects that air agencies would submit the High Wind Action Plan following the EPA's initial review of a demonstration package. The EPA recognizes that the information contained in the prospective controls analysis and the High Wind Action Plan is likely to overlap. The EPA solicits feedback on the anticipated use and functionality of these plans. Specifically, the EPA requests that commenters identify: (1) Specific elements in the prospective controls analysis and High Wind Action Plan that are useful, (2) whether these concepts should be combined or kept separate and (3) whether the flexibility to implement needed dust controls provided by the High Wind Action Plan as a voluntary alternative to the traditional regulatory nonattainment designation process is helpful.
- In Table 3 of the revised draft High Winds Guidance document, the EPA identifies example technical analyses that air agencies should consider when preparing their high wind dust event controls analysis to demonstrate the not reasonably controllable or preventable criterion. The EPA solicits comment on the identified analyses and any additional technical analyses that air agencies could use to demonstrate that the wind exceeded an identified high wind threshold and that the exceedance was caused by emissions that were not reasonably controllable.
- The EPA acknowledges that certain extreme exceptional event cases may require more limited demonstration packages. Whether a particular event should be considered "extreme" for this purpose depends on the type and severity of the event, pollutant concentration, spatial extent, temporal extent, and proximity of the event to the violating monitor. Several meteorological phenomena that could be considered extreme events include hurricanes, tornadoes, haboobs, and catastrophic volcanic eruptions. The EPA addresses "extreme" high wind dust events in the draft Q&A document.

but solicits comment on whether and how specific events of various types should be considered to be "extreme."

With this document, the EPA is announcing the availability of revised draft guidance, along with examples of approved demonstrations on the EPA's Web site at *http://www.epa.gov/ttn/analysis/exevents.htm*. The EPA is providing the draft guidance to facilitate review of these materials by outside parties and to help ensure that the EPA's final guidance provides an efficient and effective process to make determinations regarding air quality data affected by events. The EPA notes that these draft guidance documents and the exceptional events Web site present examples to illustrate specific points. The example analyses and level of rigor are not necessarily required for all demonstrations.

After receiving timely submitted public comments on the draft guidance, the EPA plans to issue updated non-binding guidance. In addition, the EPA will continue to work closely with state, local, and tribal agencies to address issues arising during the development and submittal of exceptional event demonstration packages. The EPA is deferring a decision on whether to revise the Exceptional Events Rule.

The EPA invites public comment on all aspects of this draft guidance during the 60-day comment period. The draft guidance is not a regulation or any other kind of final action and does not establish binding requirements on the EPA or any state, local, or tribal agency or any emissions source. While the EPA has established a docket and is requesting public comment on the draft guidance, this procedure does not alter the nature or effect of the draft guidance and does not constitute a formal rulemaking process or require the EPA to respond to public comments in the updated guidance before the EPA or other agencies may use the guidance in reaching decisions making related exceptional event demonstration submittals. The EPA retains the discretion to revise its guidance, issue additional guidance, propose regulations as appropriate, and to use information submitted in public comments to inform future decisions. Because this draft guidance does not constitute a formal rulemaking action, the EPA is not required to respond to comments, but intends to consider significant comments in amending or updating the non-binding guidance. Following the 60-day comment period and review and incorporation of comments, the EPA expects to post the revised, final guidance documents at *http://www.epa.gov/ttn/analysis/exevents.htm*.

Please refer to the **ADDRESSES** section above in this document for specific instructions on submitting comments.

III. Internet Web Site for Guidance Information

Interested parties can find the draft guidance titled, Draft Guidance Documents on the Implementation of the Exceptional Events Rule, on the Exceptional Events Web site for this rulemaking at *http://www.epa.gov/ttn/analysis/exevents.htm*. The Web site includes examples of reviewed exceptional event submissions, best practices components, and links to publicly available support information and tools that the public may find useful.

Dated: June 26, 2012.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012–16308 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0441; FRL–9352–9]

Difenzoquat; Proposed Data Call-in Order for Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed order.

SUMMARY: This document proposes to require the submission of various data to support the continuation of the tolerances for the pesticide difenzoquat. Pesticide tolerances are established under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments must be received on or before September 4, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0441; FRL–9352–9, 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Eric Miederhoff, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8028; email address: *miederhoff.eric@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. Potentially affected entities may include, but are not limited to, those involved with:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. FFDCA Data Call-In Authority

In this document, EPA proposes to issue an order requiring the submission of various data to support the continuation of the difenzoquat tolerances at 40 CFR 180.369. Under section 408(f) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(f), EPA is authorized to require, by order, submission of data "reasonably required to support the continuation of a tolerance" when such data cannot be obtained under the Data Call-In authority of section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a(c)(2)(B), or section 4 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603. A section 408(f) Data Call-In order may only be issued following notice and a comment period of not less than 60 days.

After the 60-day comment period closes, the Agency will respond to comments, if appropriate, and may issue a final order requiring the submission of various data for difenzoquat in the **Federal Register**. A section 408(f) Data Call-In order must contain the following elements:

1. A requirement that one or more persons submit to EPA a notice identifying the person(s) who commit to submit the data required in the order;

2. A description of the required data and the required reports connected to such data;

3. An explanation of why the required data could not be obtained under section 3(c)(2)(B) of FIFRA or section 4 of TSCA; and

4. The required submission date for the notice identifying one or more interested persons who commit to submit the required data and the required submission dates for all the data and reports required in the order. (21 U.S.C. 346a(f)(1)(C)).

If EPA issues such an order, persons who are interested in the continuation of the difenzoquat tolerances must notify the Agency by completing and submitting the required "§ 408(f) Order Response" form (available in the docket) within 90 days after publication in the **Federal Register.**

The "§ 408(f) Order Response Form" requires the identification of persons who will submit the required data and lists the following options available to support the required data:

a. Develop new data,

b. Submit an existing study—submit existing data not submitted previously to the Agency by anyone,

c. Upgrade a study—submit or cite data to upgrade a study classified by EPA as partially acceptable and upgradable,

d. Cite an existing study—cite an existing study that EPA classified as acceptable or an existing study that has been submitted but not reviewed by the Agency.

If EPA does issue a final order requiring the submission of data on difenzoquat and if the Agency does not receive a § 408(f) Order Response Form identifying a person who agrees to submit the required data within 90 days after publication of the final order, EPA will proceed to revoke the difenzoquat tolerances at 40 CFR 180.369. Such revocation order is subject to the objection and hearing procedure in FFDCA section 408(g)(2), but the only material issue in such a procedure is whether a submission required by the order was made in a timely fashion.

Additional events that may be the basis for modification or revocation of difenzoquat tolerances if a final order requiring data is issued include, but are not limited to, the following:

1. No person submits on the required schedule an acceptable proposal or final protocol when such is required to be submitted to the Agency for review.

2. No person submits on the required schedule an adequate progress report on a study as required by the order.

3. No person submits on the required schedule acceptable data as required by the final order.

4. No person submits supportable certifications as to the conditions of submitted data, where required by order and where no other cited or submitted study meets the data requirements the study was intended to fulfill.

III. Regulatory Background for Difenzoquat

Difenzoquat is an herbicide. It is not currently registered under FIFRA. Difenzoquat's last FIFRA registration was canceled in 2010. However, 25 FFDCA tolerances remain for residues of difenzoquat on the following commodities: barley, cattle, goat, hog, horse, poultry, sheep, and wheat (40 CFR 180.369). Since there are currently no domestic registrations for difenzoquat, these tolerances are referred to as "import tolerances."

The Agency completed a Reregistration Eligibility Decision (RED) for difenzoquat in September 1994. The RED evaluated the potential human health and ecological risks associated with all registered uses of difenzoquat, and concluded that difenzoquat products, when labeled and used as specified in the RED, did not pose unreasonable risk or adverse effects to humans or the environment. Additionally, in connection with its obligation under the Food Quality Protection Act of 1996 (FQPA), the Agency evaluated whether all difenzoquat tolerances in existence at the time of the passage of FQPA met the revised safety standard that the FQPA adopted for FFDCA section 408. A Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for Difenzoquat was completed in April 2002. The TRED concluded that the risks of difenzoquat met the revised safety standard in FFDCA section 408.

In August 2011, in response to a registrant's interest in supporting tolerances for import purposes, the Agency completed a screening-level evaluation for difenzoquat. As there are no domestic registrations for difenzoquat products, the evaluation was limited to the potential dietary risk from exposure to difenzoquat residues in imported food commodities. The evaluation concluded that additional data are needed to support a new dietary risk assessment on exposure from imported food commodities. The necessary data include: a neurotoxicity battery; residue data for wheat hay, wheat forage, and barley hay; and an immunotoxicity study. These data

requirements are discussed in detail in Unit IV.

IV. Proposed Data Requirements

A. Proposed Data and Reports

Pursuant to FFDCA section 408(f), EPA has determined that additional data are reasonably required to support the continuation of the import tolerances for difenzoquat, which are codified at 40 CFR 180.369. These data cannot be obtained under FIFRA section 3(c)(2)(B) because difenzoquat is not registered under FIFRA and the data call-in authority under that section only extends to registered pesticides. These data cannot be obtained under TSCA because pesticides are excluded from coverage under that statute. 15 U.S.C. 2602(2)(B)(ii).

Accordingly, EPA proposes to issue a final order requiring the submission of the following data:

1. *Neurotoxicity Screening Battery (870.6200). Rationale.* EPA does not have a neurotoxicity screening battery (870.6200) for difenzoquat. This is a data requirement under 40 CFR part 158 as a part of the data requirements for registration of a pesticide (food and non-food uses) and establishment of FFDCA tolerances. 40 CFR 158.500. The Neurotoxicity Screening Battery (870.6200) is designed to evaluate the potential adverse effects on the nervous system from exposure to pesticide chemicals. The acute neurotoxicity study is required to detect possible effects resulting from a single exposure. The subchronic neurotoxicity study is intended to detect possible effects resulting from repeated or long-term exposure.

2. *Immunotoxicity Study (870.7800).* A final report and protocol are required. *Rationale.* EPA does not have a functional immunotoxicity study (870.7800) for difenzoquat. This is a data requirement under 40 CFR Part 158 as a part of the data requirements for registration of a pesticide (food and non-food uses) and for establishment of a tolerance. 40 CFR 158.500. A functional immunotoxicity study under the Immunotoxicity Test Guideline (870.7800) is designed to evaluate the potential of a repeated chemical exposure to produce adverse effects (i.e., suppression) on the immune system. Immunosuppression is a deficit in the ability of the immune system to respond to a challenge of bacterial or viral infections such as tuberculosis (TB), Severe Acquired Respiratory Syndrome (SARS), or neoplasia.

3. *Crop Field Trials (860.1500)*—(wheat hay, wheat forage, and barley hay) Rationale. EPA does not have crop field trials (860.1500) for difenzoquat for the commodities wheat hay, wheat forage, or barley hay. Field trials are required for each commodity/commodity group under 40 CFR part 158. These data are used to establish the legal maximum residue that may remain on food and to assess the risk posed by the pesticide residue.

EPA guidelines recommend that crop field trials be designed to take into account where the crop is grown and how much of the crop is grown. Field trials are generally needed for each type of formulation because the formulation can have a significant effect on the magnitude of the pesticide residue left on the crop. Residue trials also need to represent the maximum application rate on the label and have a geographic distribution representative of the commodity/commodity group so that EPA can evaluate what level of residues may be present from use of the pesticide. On June 1, 2000 (65 FR 35069) (FRL–6559–3), EPA published in the **Federal Register** a Notice which provided detailed guidance on applying current U.S. data requirements for the establishment or continuance of tolerances for pesticide residues in or on imported foods. A copy of that Notice is available in the docket of this proposed order. That Notice contains instructions for determining number and location of field trials.

EPA is requesting comment on these proposed data requirements.

B. Proposed Dates for Submission of Data/Reports

The table below lists the time proposed for both the completion and submission of each study. The proposed submission date is calculated from the date of publication in the **Federal Register** of the final order.

Guideline requirement No.	Study title	Timeframe for protocol submission	Timeframe for data submission (months)
870.6200	Neurotoxicity Screening Battery	Not Required	24
870.7800	Immunotoxicity Study	6 months	12
860.1500	Crop Field Trials (wheat hay, wheat forage, and barley hay)	Not Required	24

V. Statutory and Executive Order Reviews

As required by statute, this document proposing to require submission of data in support of tolerances is in the form of a proposed order and not a rule. (21 U.S.C. 346a(f)(1)(C)). Under the Administrative Procedures Act, orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

This document proposes to require data from any party interested in supporting certain tolerances. Because this proposed order is not a significant regulatory action it is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), and also 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 proposed order also does not 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). This proposed order does contain information collections that have been approved by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

This document proposes to require data from any party interested in supporting certain tolerances and does not impose obligations on any person or entity including States or tribes; nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. 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 proposed final rule. In addition, this proposed order 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) (Pub. L. 104–4).

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), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

List of Subjects in 40 CFR Part 180

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

Dated: June 22, 2012.

Michael Goodis,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–16295 Filed 7–5–12: 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–ES–2012–0013; 4500030115]

RIN 1018–AY38

Endangered and Threatened Wildlife and Plants; Listing the Hyacinth Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list as endangered the hyacinth macaw *(Anodorhynchus hyacinthinus)* under the Endangered Species Act of 1973, as amended (Act). We are taking this action in response to a petition to list this species as endangered or threatened under the Act. This document, which also serves as the completion of the status review and as the 12-month finding on the petition, announces our finding that listing is warranted for the hyacinth macaw. If we finalize this rule as proposed, it would extend the Act's protections to this species. We seek information from the public on this proposed rule and status review for this species.

DATES: *Comments:* We will consider comments and information received or postmarked on or before September 4, 2012.

Public hearing: We must receive requests for a public hearing by August 20, 2012 addressed to the contact specified in **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–ES–2012–0013.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–ES–2012–0013, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept comments by email or fax. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, 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

We were petitioned to list the hyacinth macaw, and 13 other parrot species, under the Endangered Species Act of 1973 (Act). During our status review, we found threats operating in aggregation and contributing to the risk of extinction of the species. Therefore, in this 12-month finding, we announce that listing the hyacinth macaw is warranted and are publishing a proposed rule to list this species as endangered under the Act. We are undertaking this action pursuant to a settlement agreement, and publication of this 12-month finding and proposed rule will fulfill our obligations under that agreement.

This action is authorized by the Endangered Species Act of 1973, as amended. It affects Part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations. The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions 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 to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. With regard to endangered wildlife, a permit may 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.

This regulatory action is not economically significant.

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) (16 U.S.C. 1533(b)(3)(B)) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition ("12-month finding"). In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add qualified species to or remove species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though

resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

The U.S. Fish and Wildlife Service (Service) publishes an annual notice of resubmitted petition findings (annual notice) for all foreign species for which listings were previously found to be warranted but precluded.

In this document, we announce that listing the hyacinth macaw as endangered is warranted, and we are issuing a proposed rule to add that species as endangered under the Federal Lists of Endangered and Threatened Wildlife and Plants.

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses of commenters, will become part of the administrative record.

Previous Federal Actions

Petition History

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, as represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting that we list 14 parrot species under the Act. The petition clearly identified itself as a petition and included the requisite information required in the Code of Federal Regulations (50 CFR 424.14(a)). On July 14, 2009 (74 FR 33957), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information to indicate that listing may be warranted for 12 of the 14 parrot species. In our 90-day finding on this petition, we announced the initiation of a status review to list as threatened or endangered under the Endangered Species Act of 1973, as amended (Act), the following 12 parrot species: blue-headed macaw *(Primolius couloni)*, crimson shining parrot *(Prosopeia splendens)*, great green macaw *(Ara ambiguus)*, grey-cheeked parakeet *(Brotogeris pyrrhoptera)*, hyacinth macaw *(Anodorhynchus hyacinthinus)*, military macaw *(Ara militaris)*, Philippine cockatoo *(Cacatua haematuropygia)*, red-crowned parrot *(Amazona viridigenalis)*, scarlet macaw *(Ara macao)*, white cockatoo *(C. alba)*, yellow-billed parrot *(Amazona collaria)*, and yellow-crested cockatoo *(C. sulphurea)*. We initiated this status review to determine if listing each of the 12 species is warranted, and initiated a 60-day information collection period to allow all interested parties an opportunity to provide information on the status of these 12 species of parrots. The public comment period closed on September 14, 2009.

On October 24, 2009, and December 2, 2009, the Service received a 60-day notice of intent to sue from Friends of Animals and WildEarth Guardians, for failure to issue 12-month findings on the petition. On March 2, 2010, Friends of Animals and WildEarth Guardians filed suit against the Service for failure to make timely 12-month findings within the statutory deadline of the Act on the petition to list the 14 species *(Friends of Animals, et al. v. Salazar*, Case No. 10 CV 00357 D.D.C.).

On July 21, 2010, a settlement agreement was approved by the Court (CV–10–357, D. DC), in which the Service agreed to submit to the **Federal Register** by July 29, 2011, September 30, 2011, and November 30, 2011, determinations whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for no less than 4 of the petitioned species on each date. On August 9, 2011, the Service published in the **Federal Register** a 12-month status review finding and proposed rule for the following four parrot species: Crimson shining parrot, Philippine cockatoo, white cockatoo, and yellow-crested cockatoo (76 FR 49202). On October 6, 2011, a 12-month status review finding was published for the red-crowned parrot (76 FR 62016). On October 11, 2011, a 12-month status review and proposed rule was published for the yellow-billed parrot (76 FR 62740), and on October 12, 2011, a 12-month status review was published for the blue-headed macaw and grey-cheeked parakeet (76 FR 63480).

On September 16, 2011, an extension to the settlement agreement was approved by the Court (CV–10–357, D. DC), in which the Service agreed to submit a determination for the remaining four petitioned species to the **Federal Register** by June 30, 2012.

In this status review we make a determination whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for one of the remaining species, the hyacinth macaw. This **Federal Register** document complies, in part, with the last deadline in the court-ordered settlement agreement.

Information Requested

We intend that any final actions resulting from this proposed rule will be based on the best scientific and commercial data available. Therefore, we request comments or information from other concerned governmental agencies, the scientific community, or any other interested parties concerning this proposed rule. We particularly seek clarifying information concerning:

(1) Information on taxonomy, distribution, habitat selection and trends (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) of this species.

(2) Information on the effects of habitat loss and changing land uses on the distribution and abundance of this species.

(3) Information on the effects of other potential threat factors, including live capture and hunting, domestic and international trade, predation by other animals, and any diseases that are known to affect this species or its principal food sources.

(4) Information on management programs for parrot conservation, including mitigation measures related to conservation programs, and any other private, nongovernmental, or governmental conservation programs that benefit this species.

(5) The potential effects of climate change on this species and its habitat.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. 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. 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."

Public Hearing

At this time, we do not have a public hearing scheduled for this proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in the **ADDRESSES** section. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by the date specified in **DATES**.

Species Information and Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened 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; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

Species Description

The hyacinth macaw is the largest bird of the parrot family, Family Psittacidae, (Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 405). It measures approximately 100 centimeters (cm) (3.3 feet (ft)) in length. Average female and male wing lengths measure approximately 400 to 497.5 millimeters (mm) (1.3 ft), respectively. Average tail lengths for females and males are 492.4 mm (1.6 ft) and 509.4 mm (1.7 ft), respectively (Forshaw 1973, p. 364). Hyacinth macaws are characterized by a predominately cobalt-blue plumage, black underside of wing and tail, and unlike other macaws, have feathered faces and lores (areas of a bird's face from the base of the bill to the front of the eyes). In addition, they have bare yellow eye rings, bare yellow patches surrounding the base of their lower mandibles, large and hooked grey-black bills, dark-brown irises, and dark-grey legs. However, older adults have lighter grey or white legs, which are short and sturdy to allow the bird to hang sideways or upside down while foraging. Immature birds are similar to adults but with shorter tails and paler yellow bare facial skin (Juniper and Parr 1998, pp. 416–417; Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 405; Forshaw 1973, p. 364).

At one time, hyacinth macaws were widely distributed throughout Brazil, Bolivia, and Paraguay (Pinho and Nogueira 2003, p. 30; Whittingham *et al.* 1998, p. 66; Guedes and Harper 1995, p. 395). Today, the species is limited to three separate areas, almost exclusively within Brazil, that have experienced less pressure from trapping, hunting, and agriculture: Eastern Amazonia in Pará, Brazil, south of the Amazon River along the Tocantins, Xingu, and Tapajós rivers; the Gerais region of northeastern Brazil, including the states of Maranhão, Piauí, Goiás, Tocantins, Bahia, and Minas Gerais; and the Pantanal of Mato Grosso and Mato Grosso do Sul, Brazil and marginally in Bolivia and Paraguay (Snyder *et al.* 2000, p. 119; Juniper and Parr 1998, p. 416; Abramson *et al.* 1995, p. 14; Munn *et al.* 1989, p. 407).

The hyacinth macaw exploits a variety of habitats in the Pará, Gerais, and Pantanal regions, although the climate within these three regions features a dry season that prevents the growth of extensive closed-canopy tropical forests. In Pará, the species prefers palm-rich várzea (flooded forests), seasonally moist forests with clearings, and savannas. In the Gerais region, it is located within the Cerrado biome, where it inhabits dry open forests in rocky, steep-sided valleys and plateaus, gallery forests (a stretch of forest along a river in an area of otherwise open country), and *Mauritia* palm swamps. In the Pantanal region, hyacinth macaws frequent gallery forest and palm groves with wet grassy areas (Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 407).

Although there is evidence that suggests this species was abundant before the mid-1980's (Collar *et al.* 1992, p. 4), a very rapid population decline is suspected to have taken place over the last 45 years (three generations) based on large-scale illegal trade, habitat loss, and hunting (BLI 2011, unpaginated). In 1986, Munn *et al.* (1989, p. 413) estimated the total population of hyacinth macaws to be 3,000, with a range between 2,500 and 5,000 individuals; 750 occurred in Pará, 1,000 in Gerais, and 1,500 in Pantanal (Collar *et al.* 1992, p. 4). In 2003, the population was estimated at 6,500 individuals; 5,000 of which were located in the Pantanal region (BLI 2011, unpaginated; Brouwer 2004, unpaginated). This population is the stronghold for the species and has shown signs of recovery since 1990, most likely as a response to conservation projects (BLI 2011, unpaginated; Antas *et al.* 2006, p. 128; Pinho and Nogueira 2003, p. 30).

The hyacinth macaw has a specialized diet consisting of the fruits of various palm species which are inside an extremely hard nut that only the hyacinth macaw can easily break (Guedes and Harper 1995, p. 400; Collar *et al.* 1992, p. 5). In each of the three regions where it occurs, this species utilizes only a few specific palm species. In Pará, hyacinth macaws (hyacinths) have been reported to feed on *Maximiliana regia* (inajá), *Orbignya martiana* (babassu), *Orbignya phalerata* (babacú) and *Astrocaryum sp.* (tucumán). In the Gerais region, hyacinths feed on *Attalea funifera* (piacava), *Syagrus coronata* (catolé), and *Mauritia vinifera* (buriti). In the Pantanal region, hyacinths feed exclusively on *Scheelea phalerata* (acuri) and *Acrocromia totai* (bocaiúva) (Antas *et al.* 2006, p. 128; Schneider *et al.* 2006, p. 74; Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 401; Collar *et al.* 1992, p. 5; Munn *et al.* 1987, pp. 407–408). Although the hyacinth macaw prefers bocaiúva palm nuts over acuri, bocaiúva is only readily available from September to December, which coincides with the peak of chick hatching; however, the acuri is available throughout the year and constitutes the majority of this species' diet in the Pantanal (Guedes and Harper 1995, p. 400).

Hyacinths forage for palm nuts and water on the ground. They feed on the large quantities of nuts eliminated by cattle in the fields and have been observed in close proximity to cattle ranches where waste piles are concentrated. They may also forage directly from the palm tree and drink fluid from unripe palm fruits (Juniper and Parr 1998, p. 417; Guedes and Harper 1995, pp. 400–401; Collar *et al.* 1992, pp. 5, 7). Birds often occur in small family groups except at feeding and roosting sites when large flocks of 10–100 have been observed (Abramson *et al.* 1995, p. 2). Single birds rotate responsibility for serving as a lookout. Birds are most active during the cooler parts of the day, foraging in the morning and late afternoon. Foraging generally lasts about 30 minutes followed by a 10–20 minute break before feeding

again. Foraging may be within a few meters to several kilometers from the roost or nest tree (Guedes and Harper 1995, pp. 400–401; Collar *et al.* 1992, p. 5).

Hyacinths nest from July to December in tree cavities and, in some parts of its range, cliff cavities. As a secondary tree nester, hyacinth macaws require large, preexisting tree holes for nesting (Pizo *et al.* 2008, p. 792; Abramson *et al.* 1995, p. 2). In Pará, the species nests in holes of *Bertholettia excelsa* (Brazil nut). In the Gerais region, nesting may occur in large dead *Mauritia vinifera* (buriti), but is most commonly found in natural rock crevices. In studies conducted in the Pantanal region, the species was found to nest almost exclusively (94 percent of nests) in *Sterculia striata* (manduvi); although nesting has been reported in *Pithecellobium edwalii* (angio branco), *Enterolobium contortisiliquum* (ximbuva), and *Vitex sp.* (tarumá) (Kuniy *et al.* 2006, p. 381; Pinho and Nogueira 2003, p. 30; Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 402; Collar *et al.* 1992, pp. 5–6; Munn *et al.* 1987, p. 408).

Hyacinth pairs will defend a nest using loud vocalizations and flights around the nest tree when a potential threat, such as humans, dogs, some birds, and mammals, approach. Often one or two other pairs will join in these nest defense behaviors. However, when displacing other macaw species, hyacinths engage in silent behaviors; the male and female will cover the nest opening using their bodies, hook their bill on the upper rim of the nest opening, and extend their wings. The male may fly to displace the intruding bird while the female remains at the nest opening (Guedes and Harper 1995, p. 405).

In captivity, hyacinths reach reproductive maturity between 4 and 5 years old (Abramson *et al.* 1995, p. 2). The hyacinth macaw lays two smooth, white eggs approximately 48.4 mm (1.9 inches (in)) long and 36.4 mm (1.4 in) wide. Eggs are usually found in the nest from August until December (Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 406). The female alone incubates the eggs for approximately 28–30 days. The male remains near the nest to protect it from invaders, but may leave 4–6 times a day to forage and collect food for the female (Schneider *et al.* 2006, pp. 72, 79; Guedes and Harper 1995, p. 406). Chicks are mostly naked with sparse white down feathers at hatching. Young are fed regurgitated, chopped palm nuts (Munn *et al.* 1989, p. 405). Most chicks fledge at 105–110 days old; however, separation is a slow process. Fledglings will continue to be fed by the parents for 6 months, when they begin to break hard palm nuts themselves, and may remain with the adults for 16 months, after which they will join groups of other young birds (Schneider *et al.* 2006, pp. 71–72; Guedes and Harper 1995, pp. 407–411). Although hyacinths lay two eggs, observers have reported that they rarely fledge more than one bird (Munn *et al.* 1989, p. 409). Given the long period of chick dependence, hyacinths may not breed every year (Schneider *et al.* 2006, pp. 71–72; Guedes and Harper 1995, pp. 407–411).

Conservation Status

In 1989, the hyacinth macaw was listed as a species at risk for extinction by the Brazilian Institute of Environment and Natural Resources (IBAMA), the government agency that controls the country's natural resources (Lunardi *et al.* 2003, p. 283). It is also listed as "critically endangered" by the State of Minas Gerais and "vulnerable" by the State of Pará (Garcia and Marini 2006, p. 153). This species is also currently classified as "endangered" by the International Union for the Conservation of Nature and is listed as Appendix I on the Convention on International Trade in Endangered Species (CITES) list. Species included in CITES Appendix I are the most endangered CITES-listed species. They are considered threatened with extinction, and international trade is permitted only under exceptional circumstances, which generally precludes commercial trade.

Summary of Factors Affecting the Hyacinth Macaw

This status review focuses primarily on the hyacinth macaw populations in Brazil. The species occurs only marginally within Bolivia and Paraguay as extensions from the Brazilian Pantanal population, and there is little information on the species in those countries. Most of the information on the hyacinth macaw is from the Pantanal region, as this is the largest and most studied population. We found little information on the status of the Pará and Gerais populations; therefore, we evaluated factors for these populations by a broader region (e.g., the Amazon biome for Pará and the Cerrado biome for Gerais). For particular areas in which we lack information about the species, we request additional information from the public during the proposed rule comment period.

A. Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Natural ecosystems across Latin America are being transformed due to economic development, international market demands, and government policies. In Brazil, demand for soybean oil and meal has increased, causing cultivations to significantly increase (Barona *et al.* 2010, pp. 1–2). Brazil has also risen to become the world's largest exporter of beef. Over the past decade, more than 10 million hectares (ha) (24.7 million acres (ac)) were cleared for cattle ranching, and the government is aiming to double the country's share of the beef export market to 60 percent by 2018 (Mongabay 2009, unpaginated). Much of the recent surge in cropland area expansion is taking place in the Brazilian Amazon and Cerrado regions (Nepstad *et al.* 2008, p. 1738). However, in all of the regions where the hyacinth macaw occurs, the natural vegetation, including food and nesting resources, is threatened by expansion of agriculture and cattle ranching.

Pará

Pará is one of the Brazilian states that constitute the Amazon biome (Greenpeace 2009, p. 2). This biome contains more than just the well-known tropical rainforests; it also encompasses other ecosystems, including floodplain forests and savannas. Pará has long been known as the epicenter of illegal deforestation in the Brazilian Amazon (Dias and Ramos 2012, unpaginated). Here, the most important cause of deforestation is the conversion of floodplain forests to cattle-ranching, which has expanded significantly over the last 15 years (da Silva 2009, p. 3; Lucas 2009, p. 1; Collar *et al.* 1992a, p. 7). Although the hyacinth macaw's food and nesting habitat are reasonably intact, the continuing rapid expansion of cattle ranching may affect nesting trees and food resources (Munn *et al.* 1989, p. 415).

Cattle ranching has been present in the várzea (floodplain forests) of the Amazon for centuries (Arima and Uhl, 1997, p. 433). However, state subsidies and massive infrastructure development have facilitated large-scale forest conversion and colonization for cattle ranching (Barona *et al.* 2010, p. 1). Additionally, certain factors have led to a significant expansion of this land use. The climate of the Brazilian Amazon is favorable for cattle ranching; frosts do not occur like in the south of Brazil and rainfall is more evenly distributed throughout the year, increasing pasture productivity and reducing the risk of

fire. In Pará, there is a lower incidence of disease, such as hoof-and-mouth disease, brucellosis, and ectoparasites than in central and south Brazil. Additionally, the price of land in Pará has been lower than in central and south Brazil, resulting in ranchers selling farms, establishing larger farms in Pará, and competing in the national market (Arima and Uhl, 1997, p. 446).

In the Brazilian North region, including Pará, cattle occupy 84 percent of the total area under agricultural and livestock uses. This area, on average, has expanded 9 percent per year over the last 10 years causing 70–80 percent of deforestation (Nepstad *et al.* 2008, p. 1739). Pará itself contains two-thirds of the Brazilian Amazonia cattle herd (Arima and Uhl 1997, p. 343). For 7 months of the year, cattle are grazed in the várzea, but are moved to the upper terra firme the other 5 months (Arima and Uhl, 1997, p. 440). Intense livestock activity can affect seedling recruitment via trampling and grazing. Cattle also compact the soil such that regeneration of forest species is severely reduced (Lucas 2009, pp. 1–2). This type of repeated disturbance can lead to an ecosystem dominated by invasive trees, grasses, bamboo, and ferns (Nepstad *et al.* 2008, p. 1740).

Although the immediate cause of deforestation in the Amazon was predominantly the expansion of pasture during the period 2000–2006 (Barona *et al.* 2010, p. 8), the underlying cause may be the expansion of soy cultivation in other areas, leading to a displacement of pastures further north into parts of Pará causing additional deforestation (Barona *et al.* 2010, pp. 6, 8). Pará has one of the highest deforestation rates in the Brazilian Amazon (Portal Brasil 2010, unpaginated). During 1988–2009, the state lost 123,527 km^2 (47,694 mi^2), with annual rates varying between 3,780–8,870 km^2 (1,460–3,424 mi^2) (Butler 2010, unpaginated). Modeled future deforestation is concentrated in eastern Amazonia. If current trends in agricultural expansion continue, the southeastern tributaries of the Amazon River (Tapajós and Xingu) will lose at least two-thirds of their forest cover by 2050 (Soares-Filho *et al.* 2006, p. 522).

Cerrado

The Cerrado is a 2 million km^2 (772,204 mi^2) biome consisting of plateaus and depressions with vegetation that varies from dense grasslands with sparse shrubs and small trees to an almost closed woodland (Pinto *et al.* 2007, p. 14; da Silva 1997, p. 437; Ratter *et al.* 1997, p. 223). In the Cerrado, hyacinths now mostly nest in rock crevices, most likely a response to the destruction of nesting trees (Collar *et al.* 1992, p. 5). These crevices will likely remain constant and are not a limiting factor. However, deforestation for agriculture, primarily soy crops, and cattle ranching threaten the remaining native cerrado vegetation, including palm species the hyacinth macaw relies on as a food resource.

Settlement of the Cerrado region by nonindigenous people began in the 18th Century with the quest for gold and precious stones. Later, cattle ranching became the dominant activity until the 1950's (WWF–UK 2011b, p. 2). However, during this time the Cerrado was sparsely populated and inhabitants practiced little more than subsistence agriculture (Pinto *et al.* 2007, p. 14; Ratter *et al.* 1997, p. 227). Most of the settlement and drastic anthropogenic modification to the Cerrado region began in the 1950's with the mechanization of agriculture, new fertilization techniques, and the low cost of land (Pinto *et al.* 2007, p. 14; WWF 2001, unpaginated; da Silva 1997, p. 446). With the construction of the new Brazilian capital, Brasília, in 1960, several highways and railways were built, and during the 1970's and 1980's, investment programs along with generous government subsidies, tax incentives, and low-interest loans transformed the region to a new agricultural frontier (WWF–UK 2011b, p. 2; WWF 2001, unpaginated; Ratter *et al.* 1997, pp. 227–228).

In the last 15 years, soy production has doubled due to an increasing demand related to an increase in the consumption of meat (soy is used in the manufacturing of livestock feed), use in food, and biofuel (WWF 2011, unpaginated). In 1980, cattle in the Cerrado region numbered 48 million, and have certainly grown since then. In 1994, 3.9 million ha (9.6 million ac) of soy were planted, and far more were planted with exotic grasses for pasture (Ratter *et al.* 1997, p. 228). Today, the Cerrado produces 70 percent of Brazil's farm output and constitutes 40 percent of the national cattle herd (Pearce 2011, unpaginated; WWF–UK 2011b, p. 2). The remaining Cerrado continues to be pressured by conversion for soy plantations and extensive cattle ranching. Additionally, the conversion to biofuel production is imminent, creating a market for the expansion and establishment of new areas for soy, caster beans, other oil-bearing plants, and sugar cane (WWF–UK 2011a, unpaginated; Carvalho *et al.* 2009, p. 1393; BLI 2008, unpaginated).

Fire is frequently used to clear land or stimulate new growth in pastures. Farmers often burn at the end of the dry season when fuel is high and humidity low, resulting in extremely hot fires (Klink and Machado 2005, p. 708). Cerrado vegetation is resistant to fires, but frequent burnings cause destruction, affecting tree and shrub establishment, and resulting in a more herbaceous landscape (Klink and Machado 2005, pp. 709–710; Ratter *et al.* 1997, p. 224). It was estimated that in 2000, 67 percent of the area burned in Brazil occurred within the Cerrado (Klink and Machado 2005, p. 709). From May to September 2010, there were 60,000 fire outbreaks, a 350 percent increase over the same time period in 2009. Although some of this increase is likely due to the drought at that time, more can be attributed to deliberate burning to create farmland, aggravated by a legislative challenge to Brazil's Forest Code (See Factor D) (WWF 2010, unpaginated).

More than 50 percent of the original Cerrado vegetation has been lost due to conversion to agriculture and pasture, although estimates range up to 80 percent, and the area currently continues to suffer high rates of habitat loss (Pearce 2011, unpaginated; WWF–UK 2011b, pp. 1–2; Carvalho *et al.* 2009, p. 1393; BLI 2008, unpaginated; Pinto *et al.* 2007, p. 14; Klink and Machado 2005, p. 708; Marini and Garcia 2005, p. 667; WWF 2001, unpaginated; da Silva 1997, p. 446, da Silva 1995, p. 298). During 2002–2008, the demand for land to be put into production resulted in an annual deforestation rate of more than 14,200 km^2 (5,483 mi^2) (WWF–UK 2011b, p. 2). At this rate, the vegetation of the Cerrado region is disappearing faster than the Amazon rainforest (Pearce 2011, unpaginated; WWF–UK 2001, unpaginated; Klink and Machado 2005, p. 708; Ratter *et al.* 1997, p. 228). If current rates continue, the remaining native habitat may be lost by 2030 (Marini and Garcia 2005, p. 667).

Pantanal

The Pantanal is a 140,000-km^2 (54,054-mi^2) seasonally flooded wetland interspersed with higher areas, not subject to inundation, covered with cerrado or seasonal forests (Júnior 2008, p. 133; Júnior *et al.* 2007, p. 127; Harris *et al.* 2005, p. 715; Mittermeier *et al.* 1990, p. 103). Since the 1700's, the Pantanal region has been subject to various economic activities, including mining, sugar plantations, agriculture, and cattle ranching (Harris *et al.* 2006, p. 165). Although cattle ranching has occurred in this region for more than a century, transitions during the 1990's to more intense ranching methods led to the conversion of more forests to pasture and the introduction of nonnative grasses. Today, cattle ranching is the

predominant economic activity in this region and is the greatest threat to habitat loss in the Pantanal (Pizo *et al.* 2008, p. 793; Harris *et al.* 2006, pp. 165, 175–176; Harris *et al.* 2005, pp. 715–716, 718; Pinho and Nogueira 2003, p. 30; Seidl *et al.* 2001, p. 414; Guedes and Harper 1995, p. 396; Mettermeier 1990, pp. 103, 107–108).

Eighty percent of the land in the Pantanal is owned by large-ranch owners, some whose tracts exceed 1,000 km² (386 mi²) (Seidl *et al.* 2001, p. 414; Mettermeier *et al.* 1990, p. 103). Cattle ranchers use naturally occurring grasslands for grazing cattle, but these areas are subject to seasonal flooding. During the flooding season (January to June), the upland forests experience increased pressure from cattle. These upland forests are often removed and converted to cultivated pastures (Júnior *et al.* 2007, p. 127; Harris *et al.* 2006, p. 165; Pinho and Nogueira 2003, p. 30; Seidl *et al.* 2001, p. 414; Johnson *et al.* 1997, p. 186). Clearing land to establish pasture is perceived as the economically optimal land use while land not producing beef is often perceived as unproductive (Seidl *et al.* 2001, pp. 414–415). Little of the vegetation in this region remains undisturbed due to cattle ranching and the associated burning of pastures for maintenance (Mittermeier *et al.* 1990, p. 103). Between 1990 and 2000, the annual deforestation rate was estimated at 0.46 percent. During the period 2000–2004, the rate increased to 2.3 percent per year, an increase of five times compared to the previous 10-year period. If this rate is maintained, the original vegetation area of the Pantanal, including nesting trees for the hyacinth macaw, will be completely destroyed by approximately 2050 (Harris *et al.* 2006, pp. 169, 177).

When clearing land for pastures, palm trees are often left as the cattle will feed on the palm nuts (Pinho and Nogueira 2003, p. 36). In fact, hyacinth macaws are known to occur near cattle ranches and feed off the palm nuts eliminated by the cattle (Juniper and Parr 1998, p. 417; Guedes and Harper 1995, pp. 400–401; Collar *et al.* 1992, pp. 5, 7). However, other trees, including potential nesting trees, are often removed (Snyder *et al.* 2000, p. 119). In addition to the direct removal of trees, other activities associated with cattle ranching, such as the introduction of exotic foraging grasses, grazing, and burning, are serious threats to the nesting trees of the hyacinth macaw (Júnior *et al.* 2007, p. 128; Harris *et al.* 2006, p. 175; Snyder *et al.* 2000, p. 119).

As stated above, hyacinths in the Pantanal nest almost exclusively in cavities of the manduvi tree, as it is one of the few tree species that grow large enough to supply cavities that can accommodate the hyacinth's large size. Manduvis occur in forest patches and corridors that cover only 6 percent of the vegetative area of the Pantanal (Pizo *et al.* 2008, p. 793). Much of these patches and corridors are surrounded by seasonally flooded grasslands used as rangeland for cattle (Johnson *et al.* 1997, p. 186). When forests are cleared, the natural vegetation is replaced with exotic grasses (Júnior 2008, p. 136; Harris *et al.* 2005, p. 716). More than 40 percent of the forests and savanna habitats have already been altered by the introduction of exotic grasses (Harris *et al.* 2005, p. 716; Johnson *et al.* 1997, p. 187). Fire is a common method for renewing pastures, controlling weeds, and controlling pests (e.g., ticks); however, fires frequently become uncontrolled and are known to enter the patches and corridors of manduvi trees during the dry season (Harris *et al.* 2005, p. 716; Johnson *et al.* 1997, p. 186). Although fire can promote cavity formation in manduvi trees, frequent fires can also prevent trees from surviving to a size capable of providing suitable cavities and can cause a high rate of nesting tree loss (Guedes 1993 in Johnson *et al.* 1997, p. 187). Guedes (1995 in Júnior *et al.* 2006, p. 185) noted that 5 percent of hyacinth macaw nests are lost each year to deforestation, fire, and storms.

In addition to the direct removal of trees and the impact of fire on recruitment of manduvi trees, cattle themselves have impacted the density of manduvi seedlings in the Pantanal. Cattle forage on and trample manduvi seedlings, affecting the recruitment of this species to a size large enough to accommodate hyacinths (Pizo *et al.* 2008, p. 793; Johnson *et al.* 1997, p. 187; Mettermeier *et al.* 1990, p. 107). Only those manduvi trees 60 years old or older are capable of providing these cavities (Pizo *et al.* 2008, p. 792; Júnior *et al.* 2006, p. 185). The minimum diameter at breast height (DBH) for trees to potentially contain a cavity suitable for hyacinth macaws is 50 cm (20 in), while all manduvi trees greater than 100 cm (39 in) DBH contain suitable nest cavities. Data indicate a low recruitment in classes greater than 5 cm (2 in) DBH, a strong reduction in the occurrence of individuals greater than 50 cm (20 in) DBH, and very few individuals greater than 110 cm (43 in) DBH (Júnior *et al.* 2007, p. 128). Only 5 percent of the existing adult manduvi trees in south-central Pantanal contain suitable cavities for hyacinth macaws (Guedes 1993 in Johnson *et al.* 1997, p. 186). This suggests that potential nesting sites are rare and will become increasingly rare in the future (Júnior *et al.* 2007, p. 128).

Effects of Deforestation on the Hyacinth Macaw

The hyacinth macaw is highly specialized in its diet and nest sites (Faria *et al.* 2008, p. 766; Guedes and Harper 1995, p. 400; Collar *et al.* 1992, p. 5). The loss of these tree species may pose a threat by creating a shortage of suitable nesting sites and increasing competition, and result in lowered recruitment and a reduction in population size (Lee 2010, pp. 2, 12; Júnior *et al.* 2007, p. 128; Johnson *et al.* 1997, p. 188).

The hyacinth macaw has an extremely strong and chiseled beak which allows it to feed on extremely hard palm nuts that few, if any, other species can eat (Guedes and Harper 1995, p. 400; Collar *et al.* 1992, p. 5). Loss of these palm species, especially in Pará and the Cerrado region where food sources are threatened, could lead to reduced fitness, reduced reproduction, and extinction. For example, one of the major factors thought to have contributed to the critically endangered status of the Lear's macaw *(Anodorhynchus leari)* is the loss of its food source, licuri palm stands *(Syagrus)*, to cattle grazing (Collar *et al.* 1992, p. 257).

Lack of breeding cavities can be a limiting factor for cavity-nesting parrot species (Pinho and Noguiera 2003, p. 30). Hyacinths can tolerate a certain degree of human disturbance at their breeding sites (Pinho and Noguiera 2003, p. 36); however, the number of usable cavities increases with the age of the trees in the forest (Newton 1994, p. 266), and clearing land for agriculture and cattle ranching, cattle trampling and foraging, and burning of forest habitat result in the loss of mature trees with natural cavities of sufficient size and a reduction in recruitment of native species, which could eventually provide nesting cavities. A shortage of nest sites can threaten the persistence of the hyacinth macaw by constraining breeding density, resulting in lower recruitment and a gradual reduction in population size (Júnior *et al.* 2007, p. 128; Johnson *et al.* 1997, p. 188; Guedes and Harper 1995, p. 405; Newton 1994, p. 265). This may lead to long-term effects on the viability of the hyacinth macaw population, especially in Pará and the Pantanal where persistence of nesting trees is threatened (Júnior *et al.* 2007, p. 128; Júnior *et al.* 2006, p. 181).

Habitat and feeding specializations are good predictors of the risk of

extinction of birds. The hyacinth macaw scores high in both feeding and nest site specialization (Pizo *et al.* 2008, pp. 794–795). Although a species may withstand the initial shock of deforestation, factors such as the lack of food resources and breeding sites may reduce the viability of the population and make them vulnerable to extinction (Sodhi *et al.* 2009, p. 517). Given the land-use trends across the range of the hyacinth macaw, the continued existence of food and nesting resources is a great concern.

Conservation Actions

Brazil announced in 2009 a plan to cut deforestation rates by 80 percent by 2020 with the help of international funding; Brazil's plan calls on foreign countries to find $20 billion U.S. dollars (USD) (Marengo *et al.* 2011, p. 8; Moukaddem 2011, unpaginated; Painter 2008, unpaginated). If Brazil's plan is implemented and the goal is met, deforestation in Brazil would be significantly reduced. Despite obstacles to overcome to reach this goal, including annual funding, deforestation fell by 80 percent in the past 6 years due to police raids and other tactics used to crack down on illegal deforesters (Barrionuevo 2012, unpaginated). However, the Brazilian Senate is currently debating reform to Brazil's Forest Code. We do not know the current status of the bill, but if the reform is passed, it would reduce the percentage of land a private landowner would be required to maintain as forest (See Factor D). The expectation of the bill being passed has already resulted in a spike in deforestation. If the bill is passed, it would undermine Brazil's commitment to reduce deforestation (Moukaddem 2011, unpaginated; WWF–UK 2011a, unpaginated).

In Brazil, the Ministry of Environment and The Nature Conservancy have worked together to implement the Farmland Environmental Registry to curb illegal deforestation in the Amazon. Once all of the country's rural properties are registered in the system, Brazil will be able to more easily identify and track illegal deforestation through satellite monitoring and develop land use plans to create alternatives for farmers and ranchers, guaranteeing the protection of Amazon land. This plan helped Paragominas, a municipality in Pará, be the first in Brazil to come off the government's blacklist of top Amazon deforesters. After 1 year, 92 percent of rural properties in Paragominas had been entered into the registry, and deforestation was cut by 90 percent. In response to this success, Pará launched its Green Municipalities Program in 2010. The purpose of this project is to eliminate illegal deforestation by 2014 across more than 77 municipalities. The program aims to show how it is possible to develop a new model for an activity identified as a major cause of deforestation (Dias and Ramos 2012, unpaginated; Vale 2010, unpaginated). If these two programs continue to be implemented and show success like that experienced in Paragominas, it would contribute significantly to the reduction of deforestation not only in the Amazon, but throughout Brazil.

Awareness of the urgency in protecting the biodiversity of the Cerrado biome is increasing (Klink and Machado 2005, p. 710). The Brazilian Ministry of the Environment's National Biodiversity Program and other government-financed institutes such as the Brazilian Environmental Institute, Center for Agriculture Research in the Cerrado, and the National Center for Genetic Resources and Biotechnology, are working together. Additionally, nongovernmental organizations such as Fundaço Pró-Natureza, Instituto Sociedade População e Natureza, and World Wildlife Fund have provided valuable assessments and are pioneering work in establishing extractive reserves (Ratter *et al.* 1997, pp. 228–229). Other organizations are working to increase the area of Federal Conservation Units; currently they represent only 1.5 percent of the biome (Ratter *et al.* 1997, p. 229). Teams from the University of Brasilia, Center for Agriculture Research in the Cerrado, and the Royal Botanic Garden Edinburgh have combined to form the Conservation and Management of the Biodiversity of the Cerrado Biome initiative. The aim is to survey floristic patterns to determine representative and biodiversity hot spots (Ratter *et al.* 1997, p. 229).

A network of nongovernmental organizations, Rede Cerrado, has been established to promote local sustainable-use practices for natural resources (Klink and Machado 2005, p. 710). Rede Cerrado provided the Brazilian Ministry of the Environment recommendations for urgent actions for the conservation of the Cerrado. As a result, a conservation program, Program Cerrado Sustentavel, was established to integrate actions for conservation in regions where agropastoral activities were especially intense and damaging (Klink and Machado 2005, p. 710). Conservation International, The Nature Conservancy, and World Wildlife Fund have worked to promote alternative economic activities, such as ecotourism, sustainable use of fauna and flora, and medicinal plants, to support the livelihoods of local communities (Klink and Machado 2005, p. 710). Although these programs demonstrate an urgency and effort in protecting the Cerrado, we have no details on the specific work or accomplishments of these programs, or how they would affect, or have affected, the hyacinth macaw and its habitat.

The Brazilian Government, under its Action Plan for the Prevention and Control of Deforestation and Burning in the Cerrado—Conservation and Development (2010), committed to recuperating at least 8 million ha (20 million ac) of degraded pasture by the year 2010. It also plans to expand the areas under protection in the Cerrado to 2.1 million ha (5 million ac) (WWF–UK 2011b, p. 4). However, we do not have details on the success of the action plan or the progress on expanding protected areas.

In 1990, the Hyacinth Macaw Project (Projecto Arara Azul) began with support from the University for the Development of the State (Mato Grosso do Sul) and the Pantanal Region (Brouwer 2004, unpaginated; Guedes 2004, p. 28; Pittman 1999, p. 39). This program works with local landowners, communities, and tourists to monitor the hyacinth macaw, study the biology of this species, manage the population, and promote its conservation and ensure their protection in the Pantanal (Júnior 2008, p. 135; Harris *et al.* 2005, p. 719; Brouwer 2004, unpaginated; Guedes 2004, p. 281). Studies have addressed feeding, reproduction, competition, habitat survival, chick mortality, behavior, nests, predation, movement, and threats contributing to the reduction in the wild population (Guedes 2004, p. 281). Because there are not enough natural nesting sites in this region, the Hyacinth Macaw Project began installing artificial nest boxes; more than 180 have been installed (Guedes 2004, p. 281). Additionally, wood boards are used to make cavity openings too small for predators, while still allowing hyacinths to enter (Brouwer 2004, unpaginated).

In nests with a history of unsuccessful breeding, the Hyacinth Macaw Project has also implemented chick management, with the approval of the Committee for Hyacinth Macaw Conservation coordinated by IBAMA. Hyacinth macaw eggs are replaced with chicken eggs and the hyacinth eggs are incubated in a field laboratory. After hatching, chicks are fed for a few days, and then reintroduced to the original nest or to another nest with a chick of the same age. This began to increase the number of chicks that survived and fledged each year (Brouwer 2004, unpaginated; Guedes 2004, p. 281). Awareness has also been raised with

local cattle ranchers. Attitudes have begun to shift, and ranchers are proud of having macaw nests on the property. Local inhabitants also served as project collaborators (Guedes 2004, p. 282). This shift in attitude has also diminished the threat of illegal trade in the Hyacinth Macaw Project area (See Factor B) (Brouwer 2004, unpaginated).

The activities of the Hyacinth Macaw Project have certainly contributed to the increase of the hyacinth population in the Pantanal since the 1990's (Harris *et al.* 2005, p. 719). Nest boxes can have a marked effect on breeding numbers of many species on a local scale (Newton 1994, p. 274), and having local cattle ranchers appreciate the presence of the hyacinth macaw on their land helps diminish the effects of habitat destruction and illegal trade. However, the Hyacinth Macaw Project area does not encompass the entire Pantanal region. Although active management (installation of artificial nest boxes and chick management) has contributed to the increase in the hyacinth population, and farmers have begun to protect hyacinth macaws on their property, the Pantanal is still threatened with the expansion of cattle-ranching. The recruitment (entry of new trees into a population) of the manduvi tree is severely reduced and is expected to become increasingly rare in the future, due to ongoing damage caused by grazing and trampling of cattle as well as the burning of pastures for maintenance. If this continues, the hyacinth's preferred natural cavities will be severely limited and the species will completely rely on the installation of artificial nest boxes, which is currently limited to the Hyacinth Macaw Project area.

Summary of Factor A

Although the hyacinth macaw is found is three different biomes of Brazil, they are all threatened with the expansion of agriculture, mainly soy and cattle ranching. Pará has long been known as the epicenter of illegal deforestation and has one of the highest deforestation rates of the Amazon. Rapid expansion of cattle ranching is leading to the conversion of floodplain forests, threatening the food and nesting resources of the hyacinth macaw. If current trends in agricultural expansion continue, the southeastern tributaries of the Amazon River (Tapajós and Xingu) will lose at least two-thirds of their forest cover by 2050. The Cerrado region is disappearing faster than the Amazon forest due to soy cultivation and cattle ranching. If current rates continue, the remaining native vegetation could be lost by 2030. Although the hyacinth mainly nests in rock crevices in this region, the palm species the hyacinth macaw utilizes as food sources are threatened by direct clearing of land and the reduced recruitment of native forests by the grazing and trampling of cattle and the burning of pastures for maintenance.

The greatest threat to the habitat of the Pantanal is the expansion of cattle ranching. If current rates of deforestation continue, the original vegetation could be lost by approximately 2050. In this region, the palm species that the hyacinths utilize as food sources are usually left as cattle also feed on the palm nuts. However, the manduvi trees, which contain the majority of hyacinth nests, are already limited. Cattle affect the recruitment of native seedlings through grazing and trampling. Fire, for pasture maintenance or clearing, has been known to enter stands of manduvi trees during the dry season. Five percent of hyacinth macaw nests are lost each year to deforestation, fire, and storms, and there is evidence of severely reduced recruitment of manduvi trees, suggesting that not only are these nesting trees scarce now, but they are likely to become increasingly scarce in the future.

As discussed above, the regions where the hyacinth macaw occurs have suffered high rates of deforestation. The growing demand for soy and Brazil's plan to increase their export of beef suggest that the current trends are likely to continue and may even increase. There are conservation programs that aim to curb the deforestation rate. If these programs are implemented and goals are reached, deforestation in Brazil could be significantly reduced; however, the effects of these programs are yet to be seen. The Hyacinth Macaw Project has contributed much to the knowledge of the biology of the hyacinth macaw. Management, such as the installation of artificial nests and chick management have contributed to the increased hyacinth population in the Pantanal. However, the Pantanal population, as well as the Pará and Cerrado populations, continues to be threatened by the loss of essential food and nesting resources. Given the specialized nature of the hyacinth macaw, the loss of these resources could have a particularly devastating effect on the viability of the population. Therefore, based on the best available scientific and commercial information, we find that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the hyacinth macaw now and in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

For centuries, parrots and macaws have been trapped for the pet bird trade and captured for use of their feathers in local handicrafts (Guedes 2004, p. 279; Snyder *et al.* 2000, pp. 98–99). Additionally, hunting of parrots is widespread and large species of macaws have been known to be targeted by hunters as a food source (Tobias or Brightsmith 2007, p. 134). It is likely that hunting and habitat destruction were the main causes of the hyacinth macaw's decline until the 1960's and early 1970's. At that time, a major increase in international trade in live macaws may have had a greater effect on the decline of the species than either habitat loss or hunting (Munn *et al.* 1989, p. 412).

Trade can have a particularly devastating effect on parrot species given their long life span, low reproductive rate, and slow recovery from harvesting pressures (Lee 2010, p. 3; Thiollay 2005, p. 1121; Wright *et al.* 2001, p. 711; Munn *et al.* 1989, p. 410). Because of the difficulty in keeping young birds alive, adults are often the main target for trade; as this practice removes reproductive individuals, the population is depleted more rapidly (Collar *et al.* 1992a, p. 6). Certain trapping methods can also lead to rapid extirpation of extremely site-faithful species, like the hyacinth macaw (Collar *et al.* 1992a, p. 7). Additionally, once a species becomes rare in the wild, demand and price often increase, creating a greater demand for the species and increasing harvesting pressure (Herrera and Hennessey 2009, p. 234; Wright *et al.* 2001, p. 717). Species priced above $500 USD are more likely to be imported illegally, and higher prices often drive poaching rates (Wright *et al.* 2001, p. 718). The hyacinth macaw is a larger and more expensive species; prices may reach over $12,000 USD (Basile 2009, p. 4). Harvesting pressure can cause smaller populations than habitat degradation where some level of reproduction could be supported (Wright *et al.* 2001, p. 718).

In 1981, the hyacinth macaw was listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. There are currently 175 CITES Parties (member countries or signatories

to the Convention). Under this treaty, CITES Parties regulate the import, export, and reexport of specimens, parts, and products of CITES-listed plant and animal species. Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Scientific and Management Authorities of each CITES Party.

In October 1987, the hyacinth macaw was uplisted to Appendix I of CITES. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species generally requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species in the wild and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species in the wild, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

Based on CITES trade data obtained from United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database, from October 1987 through 2010, the time the hyacinth macaw was uplisted to CITES Appendix I, 2,092 specimens of this species were reported in international trade: 1,887 live birds, 116 feathers, 82 scientific specimens, 2 bodies, 1 skin piece, and 4 unspecified specimens, plus an additional 124 milliliters, 2 grams, and 49 flasks of scientific specimens. In analyzing these reported data, several records appear to be overcounts due to slight differences in the manner in which the importing and exporting countries reported their trade, and it is likely that the actual number of specimens of hyacinth macaws reported in international trade to UNEP–WCMC from 1987 through 2010 was 1,873, including 1,669 live birds, 115 feathers, 82 scientific specimens, 2 bodies, 1 skin piece, and 4 unspecified specimens, plus an additional 124 milliliters, 2 grams, and 49 flasks of scientific specimens. Of these specimens, 86 (4.6 percent) were exported from Bolivia, Brazil, or Paraguay (the range countries of the species). With the information given in the UNEP–WCMC database, from 1987 through 2010, only 24 of the 1,669 live hyacinth macaws reported in trade were reported as wild-sourced, 1,537 were reported as captive bred or captive born, 35 were reported as pre-Convention, and 73 were reported with the source as unknown.

Through Resolution Conf. 8.4 (Rev. CoP15), the Parties to CITES adopted a process, termed the National Legislation Project, to evaluate whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2010b, pp. 1–5). In reviewing a country's national legislation, the CITES Secretariat evaluates factors such as whether a Party's domestic laws designate the responsible Scientific and Management Authorities, prohibit trade contrary to the requirements of the Convention, have penalty provisions in place for illegal trade, and provide for seizure of specimens that are illegally traded or possessed. The Brazilian Government was determined to be in Category 1, which means they meet all the requirements to implement CITES. Bolivia and Paraguay were determined to be in Category 2, meaning legislation meets some but not all the requirements to implement CITES; however, both countries have submitted a CITES Legislation Plan, and Bolivia has also submitted draft legislation to the Secretariat for comments (*www.cites.org*, SC59 Document 11, Annex p. 1). Generally this means that Bolivia and Paraguay have not completed all the requirements to effectively implement CITES. However, since the hyacinth macaw is listed as an Appendix-I species under CITES, legal commercial international trade is very limited. Because very few of the 1,669 live hyacinth macaws reported in trade are wild-sourced (less than 2 percent), we believe that international trade controlled via valid CITES permits is not a threat to the species. In addition, Bolivia and Paraguay's Category 2 status under the National Legislation Project does not appear to be impacting the hyacinth macaw.

The capture of hyacinth macaws is illegal in Brazil, Bolivia, and Paraguay (Munn *et al.* 1989, p. 415) (See Factor D); however, despite this and CITES protection, bird catchers are known to have illegally harvested entire populations of hyacinths for both national and international trade (Munn *et al.* 1989, pp. 412–413), devastating many large populations and proving to be the cause of substantial declines in hyacinth macaws in parts of Brazil, Bolivia, and Paraguay (Munn *et al.* 1989, p. 410). In the 1970's and 1980's, substantial trade in hyacinth macaws was reported, but actual trade was likely significantly greater given the amount of smuggling, routing of birds through countries not parties to CITES, and internal consumption in South America (Collar *et al.* 1992a, p. 6; Munn *et al.* 1989, pp. 412–413). One report stated that 2,500 hyacinths were flown out of Bahía Negra, Paraguay from 1983 through 1984, (BLI 2011 unpaginated). From 1987 through 1988, 700 hyacinths were reportedly trapped and traded (Munn *et al.* 1989, p. 416). In the late 1980's and early 1990's, reports of hyacinth trapping included one trapper that worked an area for 3 years removing 200–300 wild hyacinths a month during certain seasons and another trapper who caught 1,000 hyacinths in 1 year and knew of other teams operating at similar levels (Silva (1989a) and Smith (1991c) in Collar *et al.* 1992a, p. 6). Smith (1991c, in Collar *et al.* 1992a, p. 6) estimated a minimum of 10,000 hyacinths were taken from the wild in the 1980's.

Trade in parrots was particularly high in the 1980's due to a huge demand from developed countries, including the United States, which was the main consumer of parrot species at that time (Rosales *et al.* 2007, pp. 85, 94; Best *et al.* 1995, p. 234). In the years following the enactment of the Wild Bird Conservation Act in 1992 (WBCA; see Factor D), studies found lower poaching levels than in prior years, suggesting that import bans in developed countries reduced poaching levels in exporting countries (Wright *et al.* 2001, pp. 715, 718). Although illegal trapping for the pet trade occurred at high levels during the 1980's, there is no information to suggest that illegal trapping for the pet trade is currently occurring at levels that are affecting the populations of the hyacinth macaw in its 3 regions.

In Pará, Indians aggressively defend their land and macaws from outsiders, preventing traders from operating successfully (Zimmerman *et al.* 2001, p. 18; Munn *et al.* 1989, p. 415). Munn *et al.* (1989, p. 414) noted that a well-organized professional bird-trading ring was a threat to the species in the Gerais region; however, the attitudes of the ranchers in this region were beginning to shift in favor of the macaw and against trappers on their property (Collar *et al.* 1992a, p. 8; Munn *et al.* 1989, p. 415). Thousands of hyacinths were trapped in the Pantanal for the pet trade during the 1980's, stripping many areas of this species (Antas *et al.* 2006, pp. 128–129; Munn *et al.* 1989, p. 414). However, ranch owners in the Pantanal were unhappy with the decline of hyacinth macaws on their land and began to deny bird catchers access to their land (Collar *et al.* 1992a, p. 8;

Munn *et al.* 1989, p. 415). The population of hyacinths in this region has continued to increase since the 1990's (BLI 2011, unpaginated; Antas *et al.* 2006, p. 128; Pinho and Nogueira 2003, p. 30).

We found little information on illegal trade of this species in international markets. One study found that illegal pet trade in Bolivia continues to involve CITES-listed species; the authors speculated that similar problems exist in Peru and Brazil (Herrera and Hennessey 2007, p. 298). In that same study, 11 hyacinths were found for sale in a Santa Cruz market from 2004 to 2007 (10 in 2004 and 1 in 2006) (Herrera and Hennessey 2009, pp. 233–234). Larger species, like the hyacinth, were frequently sold for transport outside of the country, mostly to Peru, Chile, and Brazil (Herrera and Hennessey 2009, pp. 233–234). We found no other data on the presence of hyacinths in illegal trade. During a study conducted from 2007 to 2008, no hyacinth macaws were recorded in 20 surveyed Peruvian wildlife markets, (Gastañaga *et al.* 2010, pp. 2, 9–10).

It is possible, given the high price of hyacinth macaws that illegal domestic trade is occurring; however, we found no information to support this. Certainly, trapping for trade has decreased significantly from levels reported in the 1980's. Additionally, we found no information identifying trade as a current threat to the hyacinth macaw. In the absence of data indicating otherwise, we find that illegal domestic and international trade is not a threat to the hyacinth macaw.

Hunting of hyacinths is illegal in Brazil, Bolivia, and Paraguay (Munn *et al.* 1989, p. 415) (See Factor D); however, hyacinths in Pará are most threatened by subsistence hunters and the feather trade by some Indian groups (Brouwer 2004, unpaginated; Munn *et al.* 1989, p. 414). Because the hyacinth is the largest species of macaw, it may be targeted by subsistence hunters, especially by settlers along roadways (Collar *et al.* 1992a, p. 7). Additionally, increased commercial sale of feather art by Kayapo Indians of Gorotire may be of concern given that 10 hyacinths are required to make a single headdress (Collar *et al.* 1992a, p. 7). The Gerais region is poor and animal protein, such as cattle, is not as abundant as in other regions; therefore, meat of any kind, including macaws, is sought as a protein source (Collar *et al.* 1992a, p. 7; Munn *et al.* 1989, p. 414).

Because the populations of hyacinth macaws that occur in Pará and the Gerais region are small, the removal of any individuals from the population would have a negative effect on reproduction and the ability of the species to recover. Hunting, for either meat or the sale of feather art, combined with habitat conversion, will continue to contribute to the decline of the hyacinth macaw in these regions. Hyacinths in the Pantanal are not hunted for meat or feathers (Munn *et al.* 1989, p. 413); therefore, these activities do not pose a threat to hyacinths in this region.

Summary of Factor B

Although trapping for the pet bird trade may have occurred in large numbers, especially in the 1980's, and was the cause of a drastic decline in hyacinth macaws, we have no information that trade is a current threat to the hyacinth macaw. Based on the WCMC Trade Database, less than 2 percent of the live hyacinth macaws reported in trade from 1987 to 2010 were wild-sourced. Therefore, we believe that international trade controlled via valid CITES permits is not a threat to this species. We found no information suggesting that illegal trapping and trade are current threats to the hyacinth macaw. In each of the regions of its range, the hyacinths are defended by the owners of the land (e.g., Indians in Pará and cattle ranchers in Gerais and Pantanal). Recent studies of wildlife markets in Bolivia and Peru found a very limited number of hyacinths for sale; the largest occurrence was in 2004 and consisted of only 10 hyacinth macaws. Furthermore, the population in the Pantanal has been increasing since the 1990's, suggesting that trapping is either no longer occurring or is not occurring such that it is impacting the hyacinth macaw at the population level in the wild.

Population and threats data is lacking for the hyacinth in the Pará and Gerais regions. We did not find any information indicating that trapping for the pet trade was a threat in these regions, but we found some information indicating that the hunting of hyacinths as a source of protein and for feathers to be used in local handicrafts may remain as threats. Although we do not have information on the numbers of macaws taken for these purposes, given the small populations in these two regions, any loss of potentially reproducing individuals could have a devastating effect on the ability of the populations to increase. Therefore, we find that hunting is a threat to the hyacinth macaw in the Pará and Gerais regions. In addition, we are not aware of any information currently available that indicates the use of this species for any scientific or educational purpose. Based on the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the hyacinth macaw in the Pará and Gerais regions now and in the future.

C. Disease or Predation

Infectious diseases can pose many direct threats to individual birds, as well as entire flocks (Abramson *et al.* 1995, p. 287). Most of the available research on diseases in psittacines, however, addresses captive-lfeld birds, while information on the health of psittacines, including the hyacinth macaw, in the wild is scarce (Allgaver *et al.* 2009, pp. 972–973; Raso *et al.* 2006, p. 236). Captive-held birds may have a higher incidence of disease than wild birds due to their exposure to sick birds, unsanitary conditions, and improper husbandry methods; therefore, it is not always clear how prevalent diseases may be in the wild and how they affect wild populations of birds. Some of the common diseases known in macaws are discussed below.

Pacheco's Parrot Disease

Pacheco's parrot disease is a systemic disease caused by a psittacid herpesvirus (PsHV–1) (Tomaszewski *et al.* 2006, p. 536; Abramson *et al.* 1995, p. 293; Panigrahy and Grumbles 1984, pp. 808, 811). It is an acute, rapidly fatal disease of parrots, and sudden death is sometimes the only sign of the disease; however, in some cases birds may show symptoms and may recover to become carriers (Tomaszewski *et al.* 2006, p. 536; Abramson *et al.* 1995, p. 293; Panigrahy and Grumbles 1984, p. 811). The outcome of the infection depends upon which of the four genotypes of PsHV–1 the individual is infected with, the species infected, and other unknown factors. For example, only genotype 4 is known to cause mortality in macaws (Tomaszewski *et al.* 2006, p. 536).

If clinical signs of Pacheco's disease are exhibited, they may include anorexia, depression, regurgitation, diarrhea, nasal discharge, central nervous system signs, and conjunctivitis (Abramson *et al.* 1995, p. 293; Panigrahy and Grumbles 1984, pp. 809–810). Death may occur 8 hours to 6 days after the onset of signs (Panigrahy and Grumbles 1984, p. 810). Potential sources may be an unapparent carrier or a recovered bird that is shedding the virus in its droppings (Tomaszewski *et al.* 2006, p. 536; Panigrahy and Grumbles 1984, p. 811).

Outbreaks of Pacheco's disease have resulted in massive die offs of captive parrots and is known to have caused

high mortality in endangered species of parrots in the United States (Tomaszewski *et al.* 2006, p. 536; Panigrahy and Grumbles 1984, p. 808). This disease and the presence of PsHV–1 have been known in captive and wild-caught hyacinth macaws (Tomaszewski *et al.* 2006, pp. 538, 540, 543; Panigrahy and Grumbles 1984, p. 809); however, we found no information indicating that this disease is impacting the hyacinth macaw at the population level in the wild.

Psittacosis

Psittacosis (Chlamydiosis), also known as parrot fever, is an infectious disease caused by the bacteria *Chlamydophila psittaci*. An estimated 1 percent of all birds in the wild are infected and act as carriers (Jones 2007, unpaginated). *C. psittaci* is transmitted through carriers who often show no signs of the disease. It is often spread through the inhaling of the organism from dried feces (Michigan Department of Agriculture 2002, p. 1), but may also pass orally from adults to nestlings when feeding via regurgitation or from the adult male to the adult female when feeding during incubation (Raso *et al.* 2006, p. 239). Clinical signs of psittacosis may include ruffled feathers, depression, anorexia, respiratory problems, dehydration, diarrhea, weight loss, conjunctivitis, rhinitis, sinusitis, and even death (Raso *et al.* 2006, pp. 235–236; Michigan Department of Agriculture 2002, p. 1). This disease can be treated with a tetracycline antibiotic (Michigan Department of Agriculture 2002, p. 1).

Wild birds living in a stable environment appear to have few complications from this disease and may not show clinical signs. This may be explained by a naturally occurring balanced host-parasite relationship (Jones 2007, unpaginated; Raso *et al.* 2006, pp. 236, 239–240). However, stress, including removal from its natural habitat or disturbance to its natural habitat or population, may disturb the host-parasite balance and the latency of *C. psittaci* may be changed, invoking the disease (Jones 2007, unpaginated; Raso *et al.* 2006, pp. 236, 239–240). There are few reports of mortality from *C. psittaci* in natural habitats, but recently captured wild birds may experience high mortality rates due to stress stemming from inadequate hygiene conditions, feeding, and overpopulation. In captivity, birds are more susceptible to infection, and latent infections become more apparent (Raso *et al.* 2006, pp. 239–240).

Hyacinth macaw nestlings stay in the nest longer than other parrot species and are, therefore, more susceptible to the disease due to transmission of the disease during feeding and through dried feces (Raso *et al.* 2006, p. 239). In a study conducted on wild hyacinth nestlings in the Pantanal of Mato Grosso do Sul, Brazil, *C. psittaci* was detected in some nestlings; however, no evidence of clinical disease or death due to psittacosis was found. We found no information indicating this disease is impacting the hyacinth macaw at the population level in the wild.

Papillomatosis

Papillomas are pink to white fleshy or granular growths, or lesions, commonly encountered in macaw species (Abramson *et al.* 1995, pp. 297–298). The cause of this disease is thought to be an infectious agent; however, this theory has not been confirmed. The onset of this disease may occur following major stressors, such as transporting, Pacheco's disease, or psittacosis (Abramson *et al.* 1995, p. 297).

Most of the birds with papillomas exhibit no clinical signs, however, cloacal lesions may cause straining, malodorous droppings, reduced fertility, secondary bacterial infections, bloody droppings, or anemia. Oral lesions may cause wheezing, secondary bacterial infections, sinusitis, excessive salivation, and difficulty swallowing. Lesions in the esophagus, crop, or proventriculus (the gizzard) may experience vomiting and weight loss (Abramson *et al.* 1995, pp. 297–298). Although this disease is common in macaw species, it has not been documented in the hyacinth macaw (Abramson *et al.* 1995, p. 297).

Proventricular Dilatation Disease

Proventricular dilatation disease (PDD), also known as avian bornavirus (ABV) or macaw wasting disease, is a serious disease reported to infect psittacines. Macaws are among those commonly affected by PPD (Abramson *et al.* 1995, p. 288), although it is a fatal disease that poses a serious threat to all domesticated and wild parrots worldwide, particularly those with very small populations (Kistler *et al.* 2008, p. 1; Abramson *et al.* 1995, p. 288). This contagious disease causes damage to the nerves of the upper digestive tract, so that food digestion and absorption are negatively affected. The disease has a 100-percent mortality rate in affected birds, although the exact manner of transmission between birds is unclear. In 2008, researchers discovered a genetically diverse set of novel ABVs that are thought to be the cause (Kistler *et al.* 2008, p. 1). The researchers developed diagnostic tests, methods of treating or preventing bornavirus infection, and methods for screening for the anti-bornaviral compounds (Kistler *et al.* 2008, pp. 1–15). We found no information on this disease in hyacinth macaws.

Psittacine Beak and Feather Disease

Psittacine beak and feather disease (PBFD) is a common viral disease that has been documented in more than 60 psittacine species, but all psittacines should be regarded as potentially susceptible (Rahaus *et al.* 2008, p. 53; Abramson *et al.* 1995, p. 296). The causative agent is a virus belonging to the genus Circovirus (Rahaus *et al.* 2008, p. 53). This viral disease, which originated in Australia, affects both wild and captive birds, causing chronic infections resulting in either feather loss or deformities of the beak and feathers (Rahaus *et al.* 2008, p. 53; Cameron 2007, p. 82). PBFD causes immunodeficiency and affects organs such as the liver and brain, and the immune system. Suppression of the immune system can result in secondary infections due to other viruses, bacteria, or fungi. The disease can occur without obvious signs (de Kloet and de Kloet 2004, p. 2,394). Birds usually become infected in the nest by ingesting or inhaling viral particles. Infected birds develop immunity, die within a couple of weeks, or become chronically infected. No vaccine exists to immunize populations (Cameron 2007, p. 82). We found no information on this disease in hyacinth macaws.

Although there are many diseases that could negatively affect macaws, including the hyacinth macaw, in captivity and in the wild, we are unaware of any information indicating that any of those diseases are impacting the hyacinth macaw at a level that may affect the status of the species as a whole and to the extent that it is considered a threat to the species.

Predation

In a study conducted in the Brazilian Pantanal from 2002 through 2005, researchers identified several predators of hyacinth macaw eggs. These predators included toco toucans *(Ramphastos toco)*, purplish jays *(Cyanocorax cyanomelas)*, white-eared opossums *(Didelphis albiventris)*, and coatis *(Nasua nasua)*. Of 582 eggs monitored over 3 years, 23.7 percent (approximately 138) were lost to predators. The toco toucan was the main predator, responsible for 12.4 percent of the eggs lost and 53.5 percent of the eggs lost annually (Pizo *et al.* 2008, p. 795). Although most predators leave some

sort of evidence behind, toco toucans are able to swallow hyacinth macaw eggs whole, leaving no evidence behind. This may lead to an underestimate of nest predation by toucans (Pizo *et al.* 2008, p. 793). Toco toucans may also take over nest holes occupied by hyacinth macaws, killing nestlings.

The loss of eggs, nestlings, and adults can have a direct impact on the recruitment of hyacinth macaws and the ability of a population to increase. Despite the information on lost eggs in the Pantanal due to predation, most notably by the toco toucan, this population has been increasing, suggesting that predation is not occurring at a level that is affecting the status of the population. We found no information on potential predators or information indicating that predation may be a threat in the other parts of the hyacinth macaw's range. Therefore, we find that predation is not impacting the hyacinth macaw at a level that may affect the status of the species as a whole and to the extent that it is considered a threat to the species.

Summary of Factor C

Although there are many diseases that could affect the hyacinth macaw, we found no evidence of adverse impacts to the species such that it rises to the level of a threat. Predation is a normal occurrence in wild populations, and there is information indicating that hyacinth eggs are lost due to predation by toco toucans as well as other predators; however, we found no information indicating that this is occurring such that it rises to the level of a threat to the hyacinth macaw. As a result, we find that disease and predation are not threats to the hyacinth macaw in any portion of its range now or in the future.

D. Inadequacy of Existing Regulatory Mechanisms

National Laws

The hyacinth macaw is protected under Brazilian law (Snyder *et al.* 2000, p. 119; Stattersfield and Capper 1992, p. 257). Article 225 of the Brazilian Constitution (Title VIII, Chapter VI, 1988) states the right to an ecologically balanced environment for all people, including future generations, and gives the federal, state, and municipality governments the responsibility of protecting the environment and the fauna and flora of Brazil (Michigan State University, College of Law 2012, unpaginated). Wildlife species and their nests, shelters, and breeding grounds are protected according to Law No. 5197/1967. This law prohibits the hunting and trade of animal species without authorization. Hunting and trade are punishable by imprisonment of 2–5 years. Article 35 of this law also requires that textbooks include text on the protection of wildlife, primary and middle school educational programs include 2 hours per year on the matter, and radio and television programs include 5 minutes per week on wildlife protection. The hyacinth macaw is also listed under the Official List of Brazilian Endangered Animal Species (Order No. 1.522/1989). As described under Factor B, hunting and trade of hyacinth macaws has decreased significantly since the 1980's. Brazil's campaigns to protect wildlife and other outreach programs, which have contributed to the shift in attitudes, have contributed to this decline. The hyacinth is still threatened with some hunting in parts of its range, but given the drastic declines in both trade and hunting since the 1980's, these laws may be contributing to the protection of the hyacinth macaw. However, as discussed under Factor A, the food and nesting resources of the hyacinth macaw are threatened by deforestation for agriculture and cattle ranching. Deforestation and programs that encourage the expansion of economic activities, and the subsequent conversion of land, conflicts with the stated priority for protection (Seidl *et al.* 2001, p. 414); therefore, these laws do not appear to provide adequate protection to the habitat of the hyacinth macaw.

In 1998, Brazil passed the Environmental Crimes Law (Law No. 9605/98). Section I of this law details crimes against wild fauna, which include: The killing, harassment, hunting, capturing, or use of any fauna species without authorization (Clayton 2011, p. 4; UNEP, n.d., unpaginated). Additionally, except for the State of Rio Grande do Sul, commercial, sport, and recreational hunting are prohibited in Brazil. Penalties include a jail sentence of 6 months to 1 year, and/or a fine; the penalty is increased by half if the crime is committed under certain circumstances, including against rare species or those considered endangered, or within a protected area. However, it is not considered a crime to kill an animal when it is to satisfy hunger; to protect agriculture, orchards, and herds if authorized; or if the animal has been characterized as dangerous. This law also protects against other crimes involving the fauna species of Brazil. With respect to bird species, this law prohibits inhibiting reproduction without authorization; modifying or destroying nests or shelters; selling, offering, exporting, purchasing, keeping, utilizing, or transporting eggs, as well as products derived from fauna species without authorization; and introducing species into the country without license. Although this law provides protection to the fauna species of Brazil, it is more permissive than the prior law, the Fauna Protection Act (Law No. 5.197/1967), which provided more severe punishments (Clayton 2011, p. 4). We found that the loss of nesting trees in Pará and the Pantanal and hunting in the Pará and Cerrado regions were threats to the hyacinth macaw (Factors A and B); therefore, it appears that this regulation does not adequately protect this species or its nests.

Section II of the Environmental Crimes Law details the crimes against flora, which include the destruction and damaging of forest reserves; cutting trees in forest reserves, causing fire in forests; extracting minerals from public forests or reserves without authorization; receipt of wood or vegetable products for commercial or industrial purposes without requesting a copy of the supplier's license; polluting the environment at levels that may cause damage to the health of human beings, or death of animals or significant destruction of plants; and research or extraction of mineral resources without authorization. Penalties vary according to the crime and may be increased under certain circumstances; for example, the penalty may be increased by one sixth to one third if the crime results in a decrease of natural waters, soil erosion, or modification of climatic regime (Clayton 2011, p. 5; UNEP, n.d., unpaginated). As described under Factor A, we found forest destruction and the use of fire to clear land and maintain pastures were threats to the habitat of the hyacinth macaw; therefore, it appears that this regulation does not adequately protect native habitat.

Brazil's Forest Code, passed in 1965, is a central piece in the nation's environmental legislation (Barrionuevo 2012, unpaginated). It requires landowners in the Amazon to maintain 80 percent of their land in a natural state as a legal reserve; in the rest of Brazil, including the Cerrado and Pantanal, only 20 percent is required to be maintained in a natural state (Pearce 2011, unpaginated; Klink and Machado 2005, p. 708; Ratter *et al.* 1997, p. 228). This law was widely ignored by landowners and not enforced by the government, as evidenced by the high deforestation rates (Financial Times 2011, unpaginated; Pearce 2011, unpaginated; Ratter *et al.* 1997, p. 228).

However, in the last 6 years, Brazil began cracking down on illegal deforesters, and deforestation rates began to fall (Barrionuevo 2012, unpaginated).

Changes to the Forest Code are now being debated. In May 2011, Brazil's House of Representatives voted in favor of relaxing this Forest Code. Some of the proposed changes include: (1) Exemption of owners with plots under 405 ha (1,000 ac) from having to restore illegally deforested land; (2) amnesty for those who illegally deforested land prior to July 2008, meaning they would not have to restore lands or pay fines; and (3) cancellation of outstanding fines for environmental crimes if the violator joins a government-run program, however, strict timeframes for complying with the program were not included. In December 2011, Brazil's Senate approved a revised version (Barrionuevo 2012, unpaginated). This version would require 24 million ha (59 million ac) to be reforested, although 55 million ha (136 million ac) would have been required under the original code. Additionally, those who illegally deforested before July 2008 would be required to replant areas that should have vegetation in order to avoid fines. The House is expected to debate this version in March 2012, after which it goes to the President who has veto power (Barrionuevo 2012, unpaginated; Financial Times 2011, unpaginated; WWF–UK 2011a, unpaginated).

If this latest version is passed, it would be the greatest reforestation program in the world (Financial Times 2011, unpaginated). However, it will only be effective if it is properly enforced and adequately financed, which is questionable (Barrionuevo 2012, unpaginated). The original code was largely ignored by landowners and not enforced, leading to Brazil's high rates of deforestation. Although rates began to decrease, deforestation has spiked again in anticipation of the new reform (WWF–UK 2011a, unpaginated; WWF 2010, unpaginated). Given the ongoing and increasing deforestation rates in the Amazon, Cerrado, and Pantanal (See Factor A), it appears that this regulation does not adequately protect the forest resources of Brazil.

State Laws

The Mato Grosso do Sul State Senate passed State Act 3.348 in 2006, which forbids deforestation in the Pantanal's floodplains. However, it only prohibited deforestation for 1 year (2007), and licenses previously granted for cutting trees were allowed to be executed (Júnior 2008, p. 136). This law also set a limit for what constituted the flooding area; however, since the Pantanal is a plain that is subject to annual variation, much of the area remained outside of the realm of the law (Júnior 2008, p. 136). Therefore, this legislation did not contribute to hyacinth macaw conservation (Júnior 2008, p. 136).

To protect the main breeding habitat of the hyacinth macaw, Mato Grosso State Senate passed State Act 8.317 in 2005, which prohibits the cutting of manduvi trees, but not others. Although this protects nesting trees, other trees around it are cut, exposing the manduvi tree to winds and storms that otherwise provide shelter. Manduvi trees end up falling or breaking, rendering them useless for the hyacinths to nest in (Júnior 2008, p. 135; Júnior *et al.* 2006, p. 186). Five percent of hyacinth macaw nests in manduvi trees are lost each year to deforestation, fire, and storms in the Pantanal. Given the continuing deforestation in the Pantanal and the evidence of reduced recruitment of manduvi trees, it appears this legislation does not provide adequate protection to the nesting trees of the hyacinth macaw in the Pantanal.

Protected Areas

The main biodiversity protection strategy in Brazil is the creation of Protected Areas (National Protected Areas System (Federal Act 9.985/00) (Júnior 2008, p. 134). There are various regulatory mechanisms (Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, and Act No. 6.938) in Brazil that direct Federal and State agencies to promote the protection of lands and that govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 5–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, State, and privately owned lands (e.g., Law No. 9.985, Law No. 11.132, Resolution No. 4, and Decree No. 1.922). Brazil's formally established protection areas were developed in 2000, after a series of priority-setting workshops, and are categorized based on their overall management objectives. These include strictly protected areas (national parks, biological reserves, ecological stations, natural monuments, and wildlife refuges) for educational and recreational purposes and scientific research. There are also protected areas of sustainable use (national forests, environmental protection areas, areas of relevant ecological interest, extractive reserves, fauna reserves, sustainable development reserves, and private natural heritage reserves) that allow for different types and levels of human use with conservation of biodiversity as a secondary objective. As of 2005, there were 478 Federal and State strictly protected areas totaling 37,019,697 ha (14,981,340 ac) in Brazil (Rylands and Brandon 2005, pp. 615–616). There are other types of areas that contribute to the Brazilian Protected Areas System, including indigenous reserves and areas managed and owned by municipal governments, nongovernmental organizations, academic institutions, and private sectors (Rylands and Brandon 2005, p. 616).

Within the states where the hyacinth macaw occurs, there are a total of 53 protected areas; however, it only occurs in two (Collar *et al.* 1992a, p. 7). In the Amazon, there is a balance of strictly prohibited protected areas (49 percent of protected areas) and sustainable use areas (51 percent) (Rylands and Brandon 2005, p. 616). We found no information on the occurrence of the hyacinth macaw in any protected areas in Pará. The Cerrado biome is one of the most threatened biomes and is underrepresented among Brazilian protected areas. Only 2.25 percent of the original extent of the Cerrado is protected, (Marini *et al.* 2009, p. 1559; Klink and Machado 2005, p. 709; Siqueira and Peterson 2003, p. 11). Within the Cerrado, the hyacinth macaw is found only within the Araguaia National Park in Goiás (Collar *et al* 1992a, p. 7). In 2000, the Pantanal was designated as a Biosphere Reserve by UNESCO (Júnior 2008, p. 134). According to the State Department of Environment of Mato Grosso do Sul and IBAMA, only 4.5 percent of the Pantanal is categorized as protected areas (Harris *et al.* 2006, pp. 166–167), including strictly protected areas and indigenous areas (Klink and Machado 2005, p. 709). This includes the Taiamã Ecological Station and the Pantanal National Park (Mittermeier *et al.* 1990, p. 104), but the hyacinth macaw occurs only within the Pantanal National Park (Collar *et al* 1992a, p. 7). The distribution of Federal and State protected areas are uneven across biomes, yet all biomes need substantially more area to be protected to meet the recommendations established in the priority-setting workshops (Rylands and Brandon 2005, pp. 615–616).

There are many challenges and limitations to the effectiveness of the protected areas system. Brazil is faced with competing priorities of encouraging development for economic growth and resource protection. In the past, the Brazilian government, through various regulations, policies, incentives,

and subsidies, has actively encouraged settlement of previously undeveloped lands, which helped facilitate the large-scale habitat conversions for agriculture and cattle-ranching that have occurred throughout the Amazon, Cerrado, and Pantanal biomes (WWF–UK 2011b, p. 2; WWF 2001, unpaginated; Arima and Uhl, 1997, p. 446; Ratter *et al.* 1997, pp. 227–228). Although conservation strategies in the Amazon basin have focused on protected areas, they are insufficient for conservation (Soares-Filho *et al.* 2006, pp. 520, 522).

The Ministry of Environment is working to increase the amount of protected areas in the Pantanal and Cerrado regions, however, the Ministry of Agriculture is looking at using an additional 1 million km² (386,102 mi²) for agricultural expansion, which will speed up deforestation (Harris *et al.* 2006, p. 175). These competing priorities make it difficult to enforce regulations that protect the habitat of this species. Additionally, there is often a delay in implementation or a lack of local management commitment after the creation of protected areas, staff limitations make it difficult to monitor actions, and the lack of acceptance by society or the lack of funding make administration and management of the area difficult (Júnior 2008, p. 135; Harris *et al.* 2006, p. 175). The designation of the Pantanal as a Biosphere Reserve is almost worthless because of few strong actions for its conservation from public officials (Júnior 2008, p. 134), and neither of the national parks in which the hyacinth macaw is found is entirely secure (Collar *et al.* 1992a, p. 7).

Despite the designation of numerous protected areas throughout Brazil, these designations are not adequate enough to meet the recommendations established in the priority-setting workshops. Additionally, of 53 designated protected areas within the states the hyacinth macaw occurs, it is only found in the Araguaia and Pantanal National Parks; neither of which is secure. Additionally, the hyacinth macaw continues to be threatened in Pará and the Gerais region by hunting and habitat loss due to agricultural expansion and cattle ranching in all three regions. Therefore, it appears that Brazil's protected areas system does not adequately protect the hyacinth macaw or its habitat.

International Laws

The hyacinth macaw is listed in Appendix I of CITES. CITES is an international treaty among 175 nations, including Brazil, Bolivia, Paraguay, and the United States, that entered into force in 1975. In the United States, CITES is implemented through the U.S. Endangered Species Act of 1973, as amended. The Act designates the Secretary of the Interior as lead responsibility to implement CITES on behalf of the United States, with the functions of the Management and Scientific Authorities to be carried out by the Service. Under this treaty, member countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, and reexport of CITES-listed animal and plant species.

Through Resolution Conf. 8.4 (Rev. CoP15), the Parties to CITES adopted a process, termed the National Legislation Project, to evaluate whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2010b, pp. 1–5). In reviewing a country's national legislation, the CITES Secretariat evaluates factors such as whether a Party's domestic laws designate the responsible Scientific and Management Authorities, prohibit trade contrary to the requirements of the Convention, have penalty provisions in place for illegal trade, and provide for seizure of specimens that are illegally traded or possessed. As discussed under Factor B, it has been determined that the Brazilian Government has met all the requirements to implement CITES (*www.cites.org*, SC59 Document 11, Annex p. 1). Bolivia and Paraguay have not completed all the requirements to effectively implement CITES, although both countries have submitted a CITES Legislation Plan and Bolivia has also submitted draft legislation to the Secretariat for comments (*www.cites.org*, SC59 Document 11, Annex p. 1).

As discussed under Factor B, we do not consider international trade to be a threat impacting this species. Therefore, protection under this treaty against unsustainable international trade is adequate to address unlawful commercialization of the species.

The import of hyacinth macaws into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992. The purpose of the WBCA is to promote the conservation of exotic birds by ensuring that all imports to the United States of exotic birds are biologically sustainable and not detrimental to the species in the wild. The WBCA generally restricts the importation of most CITES-listed live or dead exotic birds except for certain limited purposes such as zoological display or cooperative breeding programs. Import of dead specimens is allowed for scientific specimens and museum specimens. The Service may approve cooperative breeding programs and subsequently issue import permits under such programs. Wild-caught birds may be imported into the United States if certain standards are met and they are subject to a management plans that provides for sustainable use. At this time, the hyacinth macaw is not part of a Service-approved cooperative breeding program and has not been approved for importation of wild-caught birds.

International trade of parrots was significantly reduced during the 1990s as a result of tighter enforcement of CITES regulations, stricter measures under EU legislation, and adoption of the WBCA, along with adoption of national legislation in various countries (Snyder *et al.* 2000, p. 99). As discussed under Factor B, we found that international trade is not a threat to this species; therefore, we believe that regulations are adequately protecting the species from international trade.

Summary of Factor D

Although there are laws intended to protect the forests of Brazil and the hyacinth macaw, deforestation for agricultural expansion and cattle ranching and hunting continue to be threats to this species. Conflicting priorities of encouraging development for economic growth and resource protection make enforcement of environmental laws intended to protect the environment and Brazil's natural resources difficult. Deforestation has long been a problem in Brazil leading to some of the highest deforestation rates in the world. In recent years, deforestation rates began to decline with greater enforcement of laws; however, deforestation rates have increased again, a result of an anticipated reform in the Forest Code. Despite laws to protect the environment and plans to significantly reduce deforestation, expansion of agriculture and cattle ranching continue and are threats to the recruitment of the food and nesting resources in which the hyacinth macaw is specialized. Without greater enforcement of laws, deforestation will continue to be a problem in Brazil. Trade of this species has decreased significantly since the 1980's, but hunting remains a threat to the small populations remaining in Pará and the Gerais region. Therefore, we find that inadequate regulatory mechanisms are a threat to the hyacinth macaw now and in the future.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Specialization

One of the main threats to the hyacinth macaw, in combination with human-related factors, is a low reproductive rate and the highly specialized nature of the *Anodorhynchus* genus (Faria *et al.* 2008, p. 777). Parrots, in general, have traits that predisposed them to extinction and make them particularly sensitive to changes in resources and increased mortality. These traits include a large body size, low rates of reproduction, low survival of chicks and fledglings, a late age at first reproduction, large proportion of nonbreeding adults, and restrictive nesting requirements (Lee 2010, p. 3; Thiollay 2005, p. 1121; Guedes 2004, p. 280; Wright *et al.* 2001, p. 711; Munn *et al.* 1998, p. 409). The low reproductive rate of the hyacinth macaw is due, in part, to asynchronous hatching, which usually results in only one chick surviving (Faria *et al.* 2008, p. 766; Kuniy *et al.* 2006, p. 381; Munn *et al.* 1989, p. 409). Additionally, observers in Brazil have reported that not all hyacinth nests fledge young and, due to the long period of chick dependence, hyacinths only breed every 2 years (Faria *et al.* 2008, p. 766; Schneider *et al.* 2006, pp. 71–72; Guedes and Harper 1995, pp. 407–411; Munn *et al.* 1989, p. 409). In a study of the Pantanal, the largest population of hyacinth macaws, it was suggested that only 15–30 percent of adults attempt to breed; it may be that a small or even smaller percentage in Pará and Gerais attempt to breed (Munn *et al.* 1998, p. 409).

The hyacinth macaw is highly specialized in both diet and nest sites, which makes it particularly vulnerable to extinction (Faria *et al.* 2008, p. 766; Pizo 2008, p. 795; Munn *et al.* 1998, pp. 404, 409; Johnson *et al.* 1997, p. 186). As discussed under *Species Description*, the hyacinth utilizes only a few species for food and nesting in the different regions of occurrence. *Anodorhynchus* macaws are highly selective in choice of palm nut; they have to be the right size and shape, as well as have an extractable kernel with the right lignin pattern (Pittman 1993, unpaginated). Hyacinth macaws require large, mature trees with preexisting holes to provide nesting cavities large enough to accommodate them (Pizo *et al.* 2008, p. 792; Abramson *et al.* 1995, p. 2). For example, in the Pantanal, hyacinths nest almost exclusively in the manduvi tree which must be at least 60 years old to provide adequate cavities (Pizo *et al.* 2008, p. 792; Júnior *et al.* 2006, p. 185).

The reproductive biology of the hyacinth macaw can result in low recruitment of juveniles and may decrease the ability to recover from reductions in population size caused by anthropogenic disturbances (Wright *et al.* 2001, p. 711). Hyacinths may not have a high enough reproduction rate and may not survive in areas where nest sites are destroyed (Munn *et al.* 1998, p. 409). Additionally, habitat and feeding specializations are good predictors of a bird species' risk of extinction, and the hyacinth macaw scores high in both food and nest site specialization (Pizo *et al.* 2008, p. 795). In Pará and Gerais, food resources are threatened by land conversion. This is cause for concern as another *Anodorhynchus* species, the Lear's macaw, is nearly extinct in part due to a shortage in its specialized food source (Guedes 2004, p. 781). In Gerais, a shortage of nesting trees has likely led the hyacinth macaw to utilize cliff cavities. The large, mature trees with preexisting holes that hyacinths require are often in shortage; given the land use trends in Pará and the Pantanal and evidence of significantly reduced recruitment of nesting trees in the Pantanal, the continued existence of nesting trees in these regions is a great concern. The effects of the low reproductive output of the hyacinth macaw and its high specialization are exacerbated by the pressure on the hyacinth macaw and its food and nesting resources due to hunting, and land conversion, making this species particularly vulnerable to extinction.

Competition

In the Pantanal, competition for nesting sites is intense. The hyacinth nests almost exclusively in manduvi trees; however, there are 17 other birds species, small mammals, and honey bees that also utilize manduvi cavities (Pizo *et al* 2008, p. 792; Pinho and Nogueira 2003, p. 36). Bees *(Apis mellifera)* are even known to occupy artificial nests (Pinho and Nogueira 2003, p. 33; Snyder *et al.* 2000, p. 120). Manduvi is a key species for the hyacinth and, as discussed under Factor A, these cavities are already limited and there is evidence of decreased recruitment of this species of tree (Júnior *et al.* 2006, p. 181). Competition among breeding hyacinth macaws is exacerbated because only trees older than 60 years produce cavities large enough to be used by the large hyacinth macaw (Pizo *et al.* 2008, p. 792). With a limited number of manduvi trees, and a further limited number of adequate size trees capable of accommodating the hyacinth macaw, and numerous species looking to use this tree, competition will certainly be increased and further limit the cavities available to the hyacinth macaw for nesting.

The lack of suitable sites far enough from existing pairs may also limit breeding pairs of birds (Newton 1994, pp. 267, 273). Removal of manduvi seeds from the vicinity of the parent plant is necessary for the recruitment of the manduvi tree as seeds deposited beneath adult trees are preyed upon by peccaries (Tayassuidae) and agoutis (Dasyprocta spp.). Spreading also avoids the clumping of adults; this is beneficial to hyacinths as they do not nest close to one another (Pizo *et al.* 2008, pp. 794–795). A study found that the best manduvi seed disperser is the toco toucan. The toco toucan, however, is also known to prey on hyacinth eggs, take over hyacinth cavities, and kill nestlings (Pizo *et al.* 2008, p. 795; Hatfield and Leland 2003, p. 14).

Climate Change

Consideration of climate change is a component of our analyses under the Endangered Species Act. The term "climate change" refers to a change in the state of the climate that can be identified by changes in the mean or variability of its properties (e.g., temperature, precipitation) and that persists for an extended period, typically decades or longer, whether the change occurs due to natural variability or as a result of human activity (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 30).

Scientific measurements taken over several decades demonstrate that changes in climate are occurring. Examples include warming of the global climate system over recent decades, 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; Solomon *et al.* 2007, pp. 35–54, 82–85).

Scientific analyses 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 fossil fuel use (IPCC 2007a, p. 5 and Figure SPM.3; Solomon *et al.* 2007, pp. 21–35). Therefore, scientists use a variety of climate models (which include consideration of natural processes and variability) in conjunction with various scenarios of

potential levels and timing of GHG emissions in order to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529).

The projected magnitude of average global warming for this century (as well as the range of projected values, which reflects uncertainty) is very similar under all combinations of models and emissions scenarios until about 2030. Thereafter, despite the projections showing greater divergence in projected magnitude, the overall trajectory is one of increased warming under all scenarios, including those which assume a reduction of GHG emissions (Meehl *et al.* 2007, pp. 760–764; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for other global climate projections.)

Various types of changes in climate may have direct or indirect effects, and these may be positive or negative depending on the species and other relevant considerations, such as interactions of climate with nonclimate variables (e.g., habitat fragmentation). Identifying likely effects often involves 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 variability and extremes; it 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). Because exposure, sensitivity, and adaptive capacity can vary by species and situation, there is no single method for conducting such analyses (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 that are relevant to the hyacinth macaw.

As is the case with all influences that we assess, if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, this does not necessarily mean the species meets the definition of a "threatened species" or an "endangered species" under the Act. If a species is listed as threatened or endangered, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Factors that threaten the hyacinth macaw, such as habitat loss, may be exacerbated by changes in Brazil's climate and associated changes to the landscape. Climate change scenarios project significant temperature changes for most of South America (Marini *et al.* 2009, p. 1559). Across Brazil, temperatures are projected to increase and precipitation to decrease (Siqueira and Peterson 2003, p. 2). At a national level, simulation results suggest that climate change may induce significant reductions in forestland in all Brazilian regions (Féres *et al.* 2009, pp. 12, 15).

Temperature increases in Brazil are expected to be greatest over the Amazon rainforest with models indicating a strong warming and drying of this region during the 21st Century, particularly after 2040 (Marengo *et al.* 2011, pp. 8, 15, 27, 39, 48; Féres *et al.* 2009, p. 2). IPCC's best estimate of temperature changes by the end of the 21st Century (2090–2099) is 2.2 °C (4 °F) under a low greenhouse gas emission scenario and 4.5 °C (8 °F) under a high emission scenario (Marengo *et al.* 2011, p. 27).

Some leading global circulation models suggest extreme weather events, such as droughts, will increase in frequency or severity due to global warming. As a result, droughts in Amazonian forests could become more severe in the future (Marengo *et al.* 2011, p. 48; Laurance *et al.* 2001, p. 782). For example, the 2005 drought in Amazonia was a 1-in-20-year event; however, those conditions may become a 1-in-2-year event by 2025 and a 9-in-10-year event by 2060 (Marengo *et al.* 2011, p. 28). Impacts of deforestation are greater under drought conditions as fires set for forest clearances burn larger areas (Marengo *et al.* 2011, p. 16). Additionally, the seasonal forests of the Amazon, such as those found in eastern Amazonia, are more strongly affected by drought due to high rates of deforestation, which increases the vulnerability of forests to wildfires during droughts (Laurance *et al.* 2001, p. 782).

Direct deforestation is an immediate threat to the Amazon and could alter climate conditions in this region. When 40 percent of the original extent of the Amazon is lost, rainfall is expected to significantly decrease across Amazonia and the rainforests may not generate enough rainfall to sustain itself (Marengo *et al.* 2011, pp. 45, 48). This can be explained by an increase in carbon dioxide concentrations, increased temperatures, and decreased rainfall such that the dry season becomes longer. Previous work has suggested that, under these conditions, the rainforest of the Amazon could die back and be replaced with different vegetation. Although there are uncertainties in the modeling, some models have predicted a change from forests to savanna-type vegetation over parts, or perhaps the entire, Amazon in the next several decades (Marengo *et al.* 2011, pp. 11, 18, 29, 43). In the regions where the hyacinth macaw occurs, the climate features a dry season, which prevents the growth of an extensive closed-canopy tropical forest. Therefore, the transition of the Amazon rainforests could provide additional suitable habitat for the hyacinth macaw. However, there are uncertainties in this modeling, and projections are not definitive outcomes. In fact, some models indicate that conditions are likely to get wetter in Amazonia in the future (Marengo *et al.* 2011, pp. 28–29). Furthermore, we do not know if the specific food and nesting resources the hyacinth macaw utilizes would spread with an increase in the dry season.

Temperatures in the Cerrado are also predicted to increase; the maximum temperature in the hottest month may increase by 4 °C (7.2 °F) and by 2100 may increase to approximately 40 °C (104 °F) (Marini *et al.* 2009, p. 1563). Along with changes in temperature, other models have predicted a decrease in tree diversity and range sizes for birds in the Cerrado.

Projections based on a 30-year average (2040–2069) indicate serious effects of Cerrado tree diversity in coming decades (Marini *et al.* 2009, p. 1559; Siqueira and Peterson 2003, p. 4). In a study of 162 broad-range tree species, the potential distributional area of most trees was projected to decline by more than 50 percent. Using two climate change scenarios, 18–56 species were predicted to go extinct in the Cerrado, while 91–23 species were predicted to decline by more than 90 percent in potential distributional area (Siqueira and Peterson 2003, p. 4).

Extreme temperatures seemed to be the most important factor limiting bird distribution, revealing their physiological tolerances (Marini *et al.* 2009, p. 1563). In a study on changes in range sizes for 26 broad-range birds in the Cerrado, range sizes are expected to decrease over time, and significantly so as soon as 2030 (Marini *et al.* 2009, p. 1564). Changes ranged from a 5 percent increase to an 80 percent decrease under two dispersal scenarios for 2011–2030, 2046–2065, and 2080–2099 (Marini *et al.* 2009, p. 1561). The largest potential loss in range size is predicted to occur among grassland and forest-dependent

species in all time frames (Marini *et al.* 2009, p. 1564). These species will likely have the worst future conservation scenarios because these habitat types are the least common (Marini *et al.* 2009, p. 1559). Although this study focused on broad-range bird species, geographically restricted birds are predicted to become rarer (Marini *et al.* 2009, p. 1564).

It is difficult to predict whether species will or will not adapt to new conditions; synergistic effects of climate change and habitat fragmentation, or other factors, such as biotic interactions, may hasten the need for conservation even more (Marini *et al.* 2009, p. 1565). Although there are uncertainties in the climate change modeling discussed above, the overall trajectory is one of increased warming under all scenarios. We do not know how the habitat of the hyacinth macaw may change under these conditions, but we can assume there will be some change. The hyacinth macaw, as discussed under Factor A, is threatened with habitat loss due to widespread expansion of agriculture and cattle ranching. Climate change has the potential to further decrease the specialized habitat needed by the hyacinth macaw. Furthermore, the ability of the hyacinth macaw to cope with landscape changes due to climate change is questionable given the specialized needs of the species.

Summary of Factor E

Traits common to parrot species, and the particularly specialized nature of the hyacinth macaw, make it a species vulnerable to extinction. This is further exacerbated by the pressure on the hyacinth macaw and its food and nesting resources due to hunting and land conversion. Competition for nesting sites in the Pantanal is intense given the number of other species that also use the manduvi tree and the reduced recruitment of this tree due to cattle grazing. As the number of suitable trees is further limited, competition for adequate cavities to accommodate the hyacinth macaw will certainly increase. There are many uncertainties when modeling future climate change; however, overall, the trajectory is one of increased warming. We do not know how the habitat of the hyacinth macaw will change, but we can assume there will be a change to which the hyacinth macaw may be particularly vulnerable, given its specialized nature. Any loss of its food and/or nesting resources, via either competition or climate change, could have devastating effects on the recruitment of the species. Therefore, based on the best available scientific and commercial information, we find that other natural or manmade factors are a threat to the hyacinth macaw now and in the future.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the hyacinth macaw is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the hyacinth macaw. We reviewed the petition, information available in our files, and other available published and unpublished information.

The hyacinth macaw is found in three populations in the Pará, Gerais, and Pantanal regions. The Pará and Gerais populations combined, according the most recent estimate in 2003, number 1,500 individuals. These small populations are threatened by high deforestation rates due to expanding agriculture and cattle ranching. In Pará, deforestation threatens both the food and nesting resources. In the Gerais region, deforestation threatens food resources as hyacinths in this population have utilized cliff crevices for nesting due to the loss of nesting trees. Additionally, we found some information indicating that the hunting of hyacinths as a source of protein and for feathers to be used in local handicrafts may remain as threats in these regions. The Pantanal population is the stronghold for this species and numbers 5,000 according to the most recent estimate. This population is threatened by limited and decreasing nesting sites due to expanding cattle ranching. Competition for nesting sites in the Pantanal has been documented. The occurrence of the hyacinth's nesting tree is limited by deforestation and cattle ranching. Data indicates significantly reduced recruitment, suggesting this species of tree, of adequate size to accommodate the hyacinth macaw, will become increasingly rare in the future. As this resource is limited, competition with the other 17 species known to utilize this nesting tree will increase.

Brazil has various laws to protect its natural resources. However, conflicting priorities of encouraging development for economic growth and resource protection make enforcement difficult. Despite these laws and plans to significantly reduce deforestation, expanding agriculture and cattle ranching continue to contribute to high deforestation rates. Although the deforestation rate began to decrease over the last 6 years, recent anticipated changes to reforestation requirements under Brazil's Forest Code have sparked increases in deforestation once again. Without effective implementation and enforcement of environmental laws, deforestation will continue. Parrots in general have traits that predispose them to extinction, but the hyacinth macaw is highly specialized in diet and nesting requirements and the loss of these resources makes it particularly vulnerable to extinction. Lastly, climate change models have predicted increasing temperatures and decreasing rainfall throughout most of Brazil, potentially causing landscape changes and affecting the distribution of the hyacinth macaw's food and nesting resources.

Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range," and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The magnitude of the threats the hyacinth macaw is facing is high. Existing laws and regulations in Brazil are not being adequately enforced to significantly reduce deforestation rates. If current rates continue, two-thirds of the forest cover along the Tapajós and Xingu rivers will be lost by 2050; the remaining native habitat of the Cerrado region will be lost by 2030; and the original vegetation of the Pantanal will be destroyed by approximately 2050. Predicted changes in Brazil's climate may exacerbate the effects of habitat loss. Under drought conditions, as predicted by some climate change models, the forests of eastern Amazonia will be more vulnerable to deforestation as fires set to clear land burn a larger area. Additionally, climate change is predicted to significantly decrease tree distribution and ranges of bird species in the Cerrado region.

The hyacinth macaw has a low reproductive rate and, in a study of the Pantanal, where the largest population of hyacinth macaws is found, it was suggested that only 15–30 percent of adults attempt to breed, and a small or even smaller percentage in Pará and Gerais may attempt to breed. Reproduction of hyacinth macaws may be further reduced due to the loss of the already-limited nesting sites in the Pantanal and an increase in the competition for this resource. Although we do not have data on the number of hyacinths lost to hunting, because these populations are so small, the removal of any individuals from the population would have a negative effect on

reproduction and the ability of the species to recover. Long-term survival of this species is a concern. Lastly, because the hyacinth macaw is specialized in its food and nesting resources, the loss of these resources makes it particularly vulnerable to extinction. Impacts from habitat loss, hunting, competition, and climate change exacerbate the effects of specialization. Any loss of vital food and nesting resources or the loss of individuals from the population from current or future threats further reduces the already-limited habitat and is likely to affect the reproductive success of this species. We do not find that the factors affecting the species are likely to be sufficiently ameliorated in the foreseeable future. Therefore, on the basis of the best scientific and commercial information, we find that the hyacinth macaw meets the definition of an "endangered species" under the Act, and we are proposing to list the hyacinth macaw as endangered throughout its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, 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 to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued 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 17.32 for threatened species. With regard to endangered wildlife, a permit may 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. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

Peer Review

In accordance with our policy, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and the data that are the basis for our conclusions regarding the proposal to list as endangered the hyacinth macaw (*Anodorhynchus hyacinthinus*) under the Act.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, our final decision may differ from this proposal.

Required Determinations

Clarity of 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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, 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 names 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of 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).

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov*, Docket No. FWS–R9–ES–2012–0013, or upon request from the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this notice are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding a new entry for "Macaw, hyacinth" in alphabetical order under Birds to the List of Endangered and Threatened Wildlife, as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Macaw, hyacinth	*Anodorhynchus hyacinthinus.*	Bolivia, Brazil, Paraguay.	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: June 26, 2012.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–16461 Filed 7–5–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2012–0038; FF09M21200–123–FXMB1231099BPP0L2]

RIN 1018–AY66

Migratory Bird Hunting; Application for Approval of Fluoropolymeric Shot Coatings as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application for nontoxic shot approval.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce that Spectra Shot, LLC, of Lafayette, Louisiana, has applied for approval of steel shot with fluoropolymeric coatings as nontoxic for waterfowl hunting in the United States. Steel shot has long been approved for waterfowl hunting. The coatings will add less than 2 mg to the mass of a shot pellet. We have initiated review of the shot coatings under the criteria we have set out in our nontoxic shot approval procedures in our regulations.

DATES: This notice announces the initiation of our review of a Tier 1 application submitted in accordance with 50 CFR 20.134. We will complete the review of the application by September 4, 2012.

ADDRESSES: If we conclude that the application warrants a regulations change, you will be able to view the application and supporting materials by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket No. FWS–R9–MB–2012–0038.
- Request a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: George Allen, at 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect most migratory bird species from take, except as permitted under the Act, which authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. We prohibit the use of shot types other than those listed in the Code of Federal Regulations (CFR) at 50 CFR 20.21(j) for hunting waterfowl and coots and any species that make up aggregate bag limits.

Since the mid-1970s, we have sought to identify types of shot for waterfowl hunting that are not toxic to migratory birds or other wildlife when ingested. We have approved nontoxic shot types and added them to the migratory bird hunting regulations in 50 CFR 20.21(j). We will continue to review all shot types submitted for approval as nontoxic.

Current Application

Spectra Shot, LLC, has submitted its application to us with the counsel that it contains all of the specified information required by 50 CFR 20.134 for a complete Tier 1 submittal, and has requested unconditional approval pursuant to the Tier 1 timeframe. Having determined that the application is complete, we have initiated a comprehensive review of the Tier 1 information under 50 CFR 20.134. After review, we will either publish a notice of review to inform the public that the Tier 1 test results are inconclusive, or we will publish a proposed rule to approve the candidate shot coating.

If the Tier 1 tests are inconclusive, the notice of review will indicate what other tests we will require before we will again consider approval of the shot coating as nontoxic. If the Tier 1 data review results in a preliminary determination that the coating does not pose a significant toxicity hazard to migratory birds, other wildlife, or their habitats, the Service will commence with a rulemaking proposing to approve the coating and add it to our list at 50 CFR 20.21(j).

Authority: We publish this notice under the authority of the Migratory Bird Treaty Act (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) and in accordance with the regulations at 50 CFR 20.134(b)(2)(i)(D)(3).

Dated: June 27, 2012.

Michael J. Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–16543 Filed 7–5–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 130
Friday, July 6, 2012

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

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Recreation Administration Permit and Fee Envelope

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), this notice announces the Forest Service's intention to revise and rename an information collection associated with recreation permits and fees and request extension approval of the information collection retitled National Recreation Program Administration from the Office of Management and Budget.

DATES: Comments must be received in writing on or before September 4, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Nancy Stremple, Recreation, Heritage, and Volunteer Resources Staff, Mail Stop 1125, USDA Forest Service, 1400 Independence Ave. SW., Washington, DC 20250.

Comments also may be submitted via facsimile to Nancy Stremple at 202–205–1145 or by email to: *recreation2300@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Recreation, Heritage and Volunteer Resources Staff, 4th Floor South, Sidney R. Yates Federal Building, 14th and Independence Avenue SW., Washington, DC on business days between the hours of 8:30 a.m. and 4:00 p.m. Visitors are encouraged to call ahead to 202–205–1169 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Recreation, Heritage, and Volunteer Resources Staff, at 202–205–1169 or *recreation2300@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Recreation Administration Permit and Fee Envelope.

OMB Numbers: 0596–0106.

Expiration Date of Approval: 01/31/2013.

Type of Request: Revision and Extension of approval of an information collection.

Abstract: The Federal Lands Recreation and Enhancement Act (16 U.S.C. 6801–6814) authorizes the Forest Service to issue permits and charge fees for recreation uses of Federal recreational lands and waters, such as group activities, recreation events and motorized recreational vehicle use. In addition, permits may be issued as a means to disperse use, protect natural and cultural resources, provide for the health and safety of visitors, allocate capacity, and/or help cover the higher costs of providing specialized services.

With this revision, Forest Service is including information collection requirements currently approved by OMB control number 0596–0019 "Visitor Permit and Visitor Registration Card" (Expires 05/31/2013) and additionally to add two new National Recreation forms, FS–2300–47 and FS–2300–48. After OMB approves and combines the burden for the collection under a single collection retitled "National Recreation Program Administration" (0596–0106), the Department will retire number 0596–0019.

The new FS–2300–47, *National Recreation Application,* is a form used to apply for a recreation permit. Information collected for FS–2300–47 includes the applicant's name, address, phone number and email address, location and activity type, date and time of requested use, itinerary, number in party, entry and exit points, day or overnight use, method of travel (if applicable), group organization or event name (if applicable), group leader name and contact information (if applicable), vehicle or boat registration and license number and State of issue (if applicable), type and number of boats, stock or off-highway vehicles (if applicable), and assessed fee and method of payment (if applicable).

The new FS–2300–48, *National Recreation Permit,* is a form used to authorize specific activities at particular facilities or areas. Information collected for FS–2300–48 includes the group or individual's name, responsible person's signature, address, phone number, date of permit, method of travel, license number and description of vehicle and tow type, payment method and amount, number and types of water craft (if applicable), number in a group at a cabin or campsite (if applicable), number and type of off-highway vehicles or other vehicles, and number and type of other use (if applicable).

This information is used to manage the application process and to issue permits for recreation uses of Federal recreational lands and waters. The information will be collected by Federal employees and agents who are authorized to collect recreation fees and/or issue recreation permits. Name and contact information will be used to inform applicants and permit holders of their success in securing a permit for a special area. Number in group, number and type of vehicles, water craft, or stock may be used to assure compliance with management area direction for recreational lands and waters and track visitation trends. A national forest may use ZIP codes to help determine where the national forest's visitor base originates. Activity information may be used to improve services. Personal information such as names, addresses, phone numbers, email addresses, and vehicle registration information will be secured and maintained in accordance with the system of records, National Recreation Reservation System (NRRS) USDA/FS–55.

FS–2300–26, *Recreation Fee Permit Envelope.* Information collected includes the amount enclosed in the envelope, number of days paid, time and date of purchase, visitor's vehicle license number and registered State, visitor's home ZIP code, number in party, other charges (if applicable), visitor's Interagency Pass/Golden Passport or Regional/Forest Pass number (if applicable), planned departure date (if applicable), site name, camp's site type: Single campsite or group campsite (if applicable), campsite number (if applicable), and the number in group.

FS–2300–26a is the same form as FS–2300–26. The difference is the color of the form is different to signify a specific region's use.

FS–2300–30, *Visitor's Permit.* Information collected includes the Visitor's name and address, area(s) to be visited, dates of visit, length of stay, location of entry and exit points, method of travel, number of people in the group, and where applicable, the number of pack and saddle stock (that is, the number of animals either carrying people or their gear), the number of dogs, and the number of watercraft and/or vehicles (where allowed).

The Forest Service employee who completes the Visitor's Permit will note on the permit any special restrictions or important information the visitor should know. The visitor receives a copy of the permit and instructions to keep the permit with them for the duration of the visit.

FS–2300–32, *Visitor Registration Card.* Information collected includes the Visitor's name and address, area(s) to be visited, dates of visit, length of stay, location of entry and exit points, method of travel, number of people in the group, and where applicable, the number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group, the number of dogs, and the number of watercraft and/or vehicles (where allowed).

FS–2300–43, *Permit for Short-Term, Noncommercial Use of Government-Owned Cabins and Lookouts* is used to record contact information including name, address, and telephone number, requested dates of occupancy, party size, and additional items if applicable, such as number of pack animals and/or snowmobiles. If unable to collect this information, national forests would not be able to manage their permit programs or disperse use, protect natural and cultural resources, provide for the health and safety of visitors, allocate capacity, and/or help cover the higher costs of providing specialized services on National Forest System recreational lands.

Estimate of Annual Burden: 3–15 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 2,598,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 123,996 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden 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 to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 29, 2012.

James M. Peña,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–16503 Filed 7–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Forest Industries and Residential Fuelwood and Post Data Collection Systems

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, Forest Industries and Residential Fuelwood and Post Data Collection Systems.

DATES: Comments must be received in writing on or before September 4, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Attn: Ronald Piva, Northern Research Station, Forest Inventory and Analysis, 1992 Folwell Ave., St. Paul, MN 55108.

Comments also may be submitted via facsimile to 651–649–5140 or by email to: *rpiva@fs.fed.us.*

The public may inspect comments received at the Northern Research Station, 1992 Folwell Ave., Room 513, St. Paul, MN during normal business hours. Visitors are encouraged to call ahead to 651–649–5150 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Ronald Piva, Northern Research Station, at 651–649–5150. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Industries and Residential Fuelwood and Post Data Collection Systems.

OMB Number: 0596–0010.

Expiration Date of Approval: March 31, 2012.

Type of Request: Extension with Revision.

Abstract: The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 require the Forest Service to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of these resources from the Nation's forest resource. To collect this information, Forest Service or State natural resource agency personnel use three questionnaires, which are collected by personal mill visits or phone calls, or which respondents return in self-addressed, postage pre-paid envelopes, or by email.

Pulpwood Received Questionnaire: Forest Service personnel use this questionnaire to collect and evaluate information from pulp and composite panel mills in order to monitor the volume, types, species, sources, and prices of timber products harvested throughout the Nation. The data collected will be used to provide essential information about the current use of the Nation's timber resources for pulpwood industrial products and is not available from other sources.

Logs and Other Roundwood Received Questionnaire: This questionnaire is used by Forest Service or State natural resource agency personnel to collect and evaluate information from the other, non-pulp or composite panel, primary wood-using mills, including small, part-time mills, as well as large corporate entities. Primary wood-using mills are facilities that use harvested wood in log or chip form, such as sawlogs, veneer logs, posts, and poles, to manufacture a secondary product, such as lumber or veneer. Forest Service personnel evaluate the information collected and use it to monitor the volume types, species, sources, and prices of timber products harvested throughout the Nation.

Residential Fuelwood and Post Questionnaire: Forest Service personnel use this questionnaire to collect and evaluate information from residential households and logging contractors in order to monitor the volume, types, species, sources of fuelwood and posts harvested for residential use, as well as the types of burning facilities in the State. The collected information will enable land managers to determine what timber to sell for use as fuelwood or fence posts, how well the local forested land will meet the demand for these timber products, and how to project future demands on these renewable natural resources.

	Pulpwood received questionnaire	Logs and other roundwood received questionnaire	Residential fuelwpod and post questionnaire
Estimate of Annual Burden Hours	30 minutes (0.5)	50 minutes (0.84)	10 minutes (0.17).
Type of Respondents	Primary users of industrial pulpwood.	Primary users of industrial roundwood products.	Residential households and logging contractors.

Estimated Annual Number of Respondents	157	1,782	500.
Estimated Annual Number of Responses per Respondent	1	1	1.
Estimated Total Annual Burden Hours on Respondents	79 hours	1,497 hours	85 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden 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 to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 28, 2012.

Deanna J. Stouder,

Associate Deputy Chief, Research and Development.

[FR Doc. 2012–16504 Filed 7–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Health Screening Questionnaire

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, Health Screening Questionnaire.

DATES: Comments must be received in writing on or before September 4, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Washington Office—Fire and Aviation Management, National Interagency Fire Center, 3833 S. Development Ave., Boise, ID 83705, Attention: Larry Sutton.

Comments also may be submitted via facsimile to 208–387–5735 or by email to: *lsutton@fs.fed.us.*

The public may inspect comments received at the National Safety Office, National Interagency Fire Center, Forest Service, USDA, 3833 Development Avenue, Boise, ID, from 8 a.m. to 4:30 p.m. Monday through Friday (Mountain Standard Time). Visitors are encouraged to call ahead to 208–387–5970 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Larry Sutton, Forest Service Fire Operations Risk Management Specialist, 208–387–5970. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Health Screening Questionnaire.

OMB Number: 0596–0164.

Expiration Date of Approval: January 31, 2013.

Type of Request: Extension with revision of an approved information collection.

Abstract: The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service to fight fires on National Forest System lands. This information collection is an approved Forest Service collection. The collection covers the USDA Forest Service (FS) and the Department of the Interior (DOI), and contains the information collection activities and burden hours for both agencies.

Wildland firefighters perform long hours of arduous labor in adverse environmental conditions. It is imperative that these firefighters be in sufficient physical condition to avoid injury to themselves or their coworkers. Federal employees and private individuals seeking employment as a firefighter with the FS or DOI complete the Health Screening Questionnaire (HSQ). This information collection covers the forms and burden hours associated with the private individuals who apply for firefighter positions with the aforementioned agencies.

Prospective firefighters must complete form *FS–5100–31, Health Screening Questionnaire,* when seeking employment as a new firefighter with the Forest Service or Department of the Interior. This form collects the following information:

- Name and Unit.
- Medical history.
- Current medical symptoms.
- Other health issues.
- Cardiovascular risk factors.

The information collected pertains to an individual's health status and health history in an effort to determine if any physical conditions exist that might result in injury or death during fitness testing or when fighting a wildfire. If Federal agency officials determine, based on the collected information, that an individual may not be physically able to train for or take a Work Capacity Test, the agency will require the individual to undergo a physical examination by a physician.

Form *FS–5100–30, Work Capacity Test: Informed Consent,* is signed by those deemed to be in sufficient health

to undergo a Work Capacity Test. The Work Capacity Test determines the level of an individual's aerobic fitness, level of muscular strength, and muscle endurance. The consent form is necessary to ensure the individual taking the test is aware of the various testing levels (arduous, moderate, and light) and the risks involved. The individual indicates the following:

- They have read the information on the form, the brochure "Work Capacity Test" and understand the purpose, instructions, and risks of the test.
- They have read the information, understood, and truthfully answered the HSQ.
- Test to be taken—pack test (arduous), field test (moderate), or walk test (light).

Failure to collect this data could result in injuries or deaths during the "Work Capacity Test" and while working on wildland fires. The information provided by an applicant for Federal employment is stored in secured official files, maintained according to Agency regulations. The information gathered is not available from other sources.

Estimate of Annual Burden: 5 Minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 7,471.

Estimated Annual Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 1,240.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden 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 to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 26, 2012.

Robin L. Thompson.

Associate Deputy Chief, State & Private Forestry.

[FR Doc. 2012–16505 Filed 7–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Arapaho and Roosevelt National Forests and Pawnee National Grassland; Boulder and Gilpin County, CO; Eldora Mountain Resort Ski Area Projects

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Arapaho and Roosevelt National Forests and Pawnee National Grassland is preparing an Environmental Impact Statement (EIS) to consider and disclose the anticipated environmental effects of implementing select projects from the 2011 Master Plan for Eldora Mountain Resort (Eldora). Through the identification of opportunities and constraints at the ski area, the proposed projects are designed to allow Eldora to meet guest expectations for a safe, quality, recreational experience by providing appropriate lifts, terrain, and guest services at the resort.

DATES: Comments concerning the scope of the analysis must be received by August 6, 2012. The draft environmental impact statement is expected to be available for public review in June 2013 and the final environmental impact statement is expected in April 2014.

ADDRESSES: Send written comments to: Eldora EIS Projects; Eldora EIS NEPA Contractor; P.O. Box 2729; Frisco, CO 80443. Comments may also be sent via email to: *info@EldoraEIS.com*, or by facsimile to (970) 668–5798. Include "Eldora EIS Projects" in the subject line. Comments may also be submitted online at *www.EldoraEIS.com*. The scoping notice and map can be reviewed/downloaded at *www.EldoraEIS.com*.

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from the project Web site, *www.EldoraEIS.com*, by contacting the Eldora EIS NEPA Contractor, Travis Beck, at (970) 668–3398 ext. 103, or by emailing: *info@EldoraEIS.com*. Further information will also be made available at two public open houses: one on July 18, 2012, from 5–8 p.m. at the Boulder Ranger District of the Arapaho and Roosevelt National Forests and Pawnee National Grassland, located at 2140 Yarmouth Avenue, Boulder, CO 80301; and one on July 19, 2012, from 5–8 p.m. at the Nederland Community Center, located at 750 Highway 72 North, Nederland, CO 80466.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The Forest Service is preparing an EIS to respond to Eldora's request to implement projects from their accepted Master Plan. In the Master Plan, Eldora identified deficiencies in several areas that detract from the guest experience and skier safety at the resort. In order to meet the needs and expectations of existing and potential guests and provide a safe skiing experience, the Forest Service has identified a purpose and need to: (1) Improve the reliability of lift and terrain offerings; (2) address skier safety concerns during prevalent wind events; (3) provide additional Intermediate to Expert ability level terrain and a new, more natural terrain experience; (4) provide new and upgraded lift infrastructure to improve the quality of the alpine ski experience; and (5) expand and improve on-mountain guest services.

Proposed Action: The project area includes approximately 615 acres of National Forest System (NFS) lands and 435 acres of private lands. The Forest Service only maintains jurisdiction over the NFS lands; however, to fulfill its obligations under the National Environmental Policy Act (NEPA) the Forest Service will analyze the entire project area for direct, indirect and cumulative effects. The proposed projects would add approximately 105 acres of traditional terrain and include approximately 80 acres of gladed terrain projects. Much of the traditional terrain construction will require tree removal for the area of the trails, approximating 105 acres of removal, although a more accurate quantity of tree removal will be disclosed in the EIS as all proposed trails may not necessitate complete tree removal. Each project component is discussed below. Additional detail can be viewed at *www.EldoraEIS.com*.

1. Placer Express Lift and Trails—Install a new six-person chairlift and create approximately 30 acres of traditional terrain and approximately 30 acres of gladed terrain projects. A Forest Plan amendment would be required to adjust the Special Use Permit (SUP) boundary to include approximately 70

acres in the northwestern portion of the Placer Pod. To facilitate construction, on-going maintenance and emergency access, a bridge crossing Middle Boulder Creek and two road segments would be constructed to connect Hessie Road (north of Middle Boulder Creek) to the proposed Placer Express bottom terminal site. The bridge would be gated year-round and restricted to administrative use.

2. Additional Back Side Terrain—Construct three new traditional trails (two Intermediate and one Expert ability level trail), a new gladed area (Bryan Glades II), and an addition to the Salto Glades on the back side of the resort. New terrain in this area would provide approximately 20 acres of new traditional terrain and approximately 30 acres of gladed terrain projects.

3. Trail Widening—Widen Lower Diamondback and Lower Ambush trails on the back side of Eldora to improve skier circulation.

4. Jolly Jug Lift and Trails—Install a new four or six-person chairlift and construct seven new Intermediate trails (approximately 55 acres of terrain) and approximately 20 acres of Intermediate ability level glades. A Forest Plan amendment would be required to adjust the SUP boundary to include approximately 17 acres of the southern portion of the Jolly Jug Pod.

5. Snowmaking—Expand snowmaking coverage to include all new traditional trails (not in any of the gladed areas) totaling approximately 105 acres.

6. Roads and Utilities—Build new road spurs and install utilities to construct and maintain the following proposed lifts and facilities: Placer Express Lift, Jolly Jug Express Lift, Challenge Lift, The Lookout Facility, and Challenge Mountain Facility. Construction and maintenance access for the proposed Jolly Jug Express bottom terminal would utilize an existing road. The existing snowmaking infrastructure would deliver drinking water to The Lookout and Challenge Mountain facilities, as is the current method for The Lookout Facility. On-site septic systems would accommodate sewage deposal for the proposed Lookout Facility and Challenge Mountain Facility.

7. Corona Lift—Remove the existing four-person Corona Lift and replace with an upgraded six-person chairlift.

8. Challenge and Cannonball Lifts—Remove the existing Challenge and Cannonball lifts and replace with a single, upgraded six-person chairlift in an alignment that provides direct out-of-base access to the summit of Challenge Mountain.

9. The Lookout Facility—Remodel the Lookout facility increasing from 3,000 square feet to between 7,700 and 9,700 square feet.

10. The Challenge Mountain Facility—Construct a new approximately 850 seat guest services facility, between 16,000 and 20,000 square feet in size, at the summit of Challenge Mountain.

11. Parking—Construct additional guest parking on private lands. This project component is not subject to ARP authorization.

12. Vegetation Management Projects—Eldora is currently preparing a Vegetation Management Plan in accordance with the SUP. Vegetation management projects may be incorporated into this EIS as components of the proposed action or may be incorporated into a separate, future NEPA project.

Responsible Official: The responsible official is the Forest Supervisor for the Arapaho and Roosevelt National Forests and Pawnee National Grassland.

Nature of Decision To Be Made: Based on the analysis that will be documented in the forthcoming EIS, the responsible official will decide whether or not to implement, in whole or in part, the proposed action or another alternative that may be developed by the Forest Service as a result of scoping.

Permits or Licenses Required: Based on proposed projects, a Clean Water Act Section 404 Permit from the U.S. Army Corps of Engineers may be required prior to potential implementation of project components.

Scoping Process: This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify resource issues that will be analyzed in the Draft EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Dated: June 27, 2012.

Sylvia Clark,

District Ranger.

[FR Doc. 2012–16300 Filed 7–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

[Docket No. FCIC–12–0007]

Notice of Request for Approval of a New Information Collection

AGENCY: Risk Management Agency, 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 intention of the Risk Management Agency (RMA) to request approval for a new information collection for Federal Crop Insurance Program Delivery Cost Survey and Interview.

DATES: Comments on this notice must be received by September 4, 2012 to be assured of consideration.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–12–0007, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Stan Harkey, Product Analysis & Accounting Division, U.S. Department of Agriculture Risk Management Agency, Beacon Facility-Mail Stop 0811, P.O. Box 419205, Kansas City, MO 64141–6205, (816) 926–3799.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and

docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov*. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received for any 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 the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice*.

FOR FURTHER INFORMATION CONTACT: Stan Harkey, Product Analysis & Accounting Division, U.S. Department of Agriculture Risk Management Agency, Beacon Facility-Mail Stop 0811, P.O. Box 419205, Kansas City, MO 64141–6205, (816) 926–3799.

SUPPLEMENTARY INFORMATION:

Title: Federal Crop Insurance Program Delivery Cost Survey and Interview.

OMB Number: 0563—NEW.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: The Risk Management Agency (RMA), through the Federal Crop Insurance Corporation (FCIC), provides crop insurance to American agricultural producers through cooperative financial assistance agreements with private-sector insurance companies (known as Approved Insurance Providers, or AIPs) who sell and service the policies. The insurance companies who sell and service FCIC policies are reimbursed for their administrative and operating (A&O) expenses directly by RMA on behalf of the policyholders. The amount of the A&O expense reimbursement paid to these companies has been an issue of legislative interest by Congress, an audit target for program oversight bodies, and a primary focus of recent negotiations between the companies and RMA. Congress directed the Government Accountability Office (GAO) to conduct a review of crop insurance delivery costs, and in April 2009, GAO released Report GAO–09–445, "Crop Insurance: Opportunities Exist to Reduce the Costs of Administering the Program." Among GAO's recommendations was that RMA conduct a "study of the costs associated with selling and servicing crop insurance policies to establish a standard method for assessing agencies' reasonable costs in selling and servicing policies." RMA agreed with this recommendation and is therefore conducting a study to determine the reasonable and necessary economic costs of selling and servicing Federal crop insurance policies. The information collection efforts (i.e., interviews and surveys) that are being announced herein will be an important part of the study. Specifically, RMA plans to conduct interviews with AIPs, insurance agents and insured farmers, and surveys to both insurance agents and insured farmers.

Interviews

The purpose of the interviews with AIPs and insurance agents is to understand the activities performed and types of costs incurred by the AIPs and insurance agents to deliver Federal crop insurance. The purpose of the interviews with insured farmers is to gain a good understanding of the interactions between the insurance agents and insured farmers and the level of agent services required by farmers to make an informed insurance choice. Information obtained from the interviews with different stakeholders (AIPs, insurance agents and insured farmers) will help RMA understand the expenses AIPs incur in delivering the Federal crop insurance and such information will be used to help design the survey instruments and determine the type of data that needs to be collected from the insurance agents and insured farmers.

Surveys

The purpose of the survey of the insurance agents is to collect relevant cost data incurred by the insurance agents in selling and servicing the Federal crop insurance policies. In order to determine the cost incurred by the insurance agents, information on the time insurance agents spend on each task required for selling and servicing the Federal crop insurance (including the insurance agents' out of pocket expenses for support staff and travel) will be gathered from the survey. General background information on the surveyed insurance agents, e.g. geographical region, types of crop insurance sold, and number of crop insurance policies sold, will also be collected. A parallel survey of the insured farmers to whom the sampled insurance agents sell crop insurance will be conducted to determine the level of service (e.g. number of insurance agent visits, educational services, and other services) that is necessary for the farmers to make an informed decision.

Interviews With AIPs

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Type of Respondents: AIPs.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 31 hours.

Interviews With Insurance Agents

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Type of Respondents: Insurance agents.

Estimated Number of Respondents: 60.

Estimated Number of Responses: 15.

Estimated Number of Responses per Respondent: 0.25.

Estimated Total Annual Burden on Respondents: 26 hours.

Interviews With Insured Farmers

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Type of Respondents: Insured farmers.

Estimated Number of Respondents: 60.

Estimated Number of Responses: 15.

Estimated Number of Responses per Respondent: 0.25.

Estimated Total Annual Burden on Respondents: 26 hours.

Survey of Insurance Agents

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Type of Respondents: Insurance agents.

Estimated Number of Respondents: 2,627.

Estimated Number of Responses: 788.

Estimated Number of Responses per Respondent: 0.3.

Estimated Total Annual Burden on Respondents: 600 hours.

Survey of Insured Farmers

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 0.5 hour per response.

Type of Respondents: Insured farmers.

Estimated Number of Respondents: 525.

Estimated Number of Responses: 158.

Estimated Number of Responses per Respondent: 0.3.

Estimated Total Annual Burden on Respondents: 120 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 Stan Harkey, Product Analysis & Accounting Division, U.S. Department of Agriculture Risk Management Agency, Beacon Facility-Mail Stop 0811, P.O. Box 419205, Kansas City, MO 64141–6205. 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.

Signed in Washington, DC, on June 27, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–16564 Filed 7–5–12; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey of Hawaii Resident Resource Users' Knowledge, Attitudes and Perceptions of Coral Reefs in Two Hawaii Priority Sites.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 400.

Average Hours per Response: 20 minutes.

Burden Hours: 133.

Needs and Uses: The United States (U.S.) Coral Reef Task Force (USCRTF) was established in 1998 by *Executive Order 13089* to lead and coordinate U.S. efforts to address the threats facing coral reefs. The Hawaii Coral Reef Working Group (CRWG), composed of key state and federal partners involved in coral reef management, was established through a local charter to provide guidance to the State of Hawaii's coral program and to prioritize sites to implement specific ridge-to-reef management activities. Priority sites are areas where coral reef ecosystems of high biological value are threatened but have strong potential for improvement with management intervention. The current two priority sites in Hawaii are South Kohala on the Big Island (Pelekane Bay-Puako-Anaeho'omalu Bay, Hawai'i) and West Maui (Ka'anapali-Kahekili, Maui). At both sites, multiple partners are collaborating to produce conservation action plans to conserve resources and human uses.

The Human Dimensions Research Program at NOAA Fisheries Pacific Islands Fisheries Science Center is initiating a survey to support development of these conservation action plans, including management actions in watersheds and in the coral reef ecosystems in the two priority sites. The purpose of this survey is to identify resident users' knowledge, attitudes, and perceptions regarding coral reef and watershed conditions and alternative management strategies to protect resources at the two priority sites.

Information from this survey is needed to inform the conservation action planning process initiated by the State of Hawaii Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (HDAR) and The Nature Conservancy (TNC) at the South Kohala site and to inform conservation and watershed planning being implemented by HDAR, The U.S. Army Corps of Engineers, and other partners at the West Maui site. Managers have indicated a more immediate need for information at the South Kohala site; therefore, we will conduct the survey there first and the survey at West Maui afterwards. The information gained from the survey will provide priority site managers with essential information about the population of resident users who can both threaten reef health and play a key role in stewardship of reef resources. Conservation planners will gain information about the threats and status of coral reefs from the resident users who interact most with those systems, and help managers identify topics for public outreach and education. A representative study of resident users' knowledge, attitudes, and perceptions will supplement broader public input into the conservation planning processes at the sites.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 2, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–16530 Filed 7–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("Department") is conducting the administrative review of the antidumping duty order on certain polyester staple fiber from the People's Republic of China ("PRC") for the period of review ("POR") June 1, 2010, through May 31, 2011. As discussed below, the Department preliminarily

determines that Zhaoqing Tifo New Fibre Co., Ltd. ("Zhaoqing Tifo") did not sell subject merchandise in the United States at prices below the normal value ("NV"). If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

DATES: *Effective Date:* July 6, 2012.

FOR FURTHER INFORMATION CONTACT: Steven Hampton or Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116 or (202) 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2007, the Department published in the **Federal Register** an antidumping duty order on certain polyester staple fiber from the PRC.[1] On July 28, 2011, the Department published a notice of initiation of an administrative review of certain polyester staple fiber from the PRC covering the period June 1, 2010, through May 31, 2011, for nine companies.[2] On August 26, 2011, the Department published a correction notice to include one company that was inadvertently omitted from the *Initiation Notice*.[3] On February 9, 2012, the Department published in the **Federal Register** a notice extending the time period for issuing the preliminary results by 30 days.[4] On April 2, 2012, the Department published in the **Federal Register** a second notice fully extending the time period for issuing the preliminary results by 90 days.[5]

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended ("the Act") directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to examine all exporters and producers involved in the review.

On August 17, 2011, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order ("APO") to all interested parties having an APO, inviting comments regarding the CBP data and respondent selection.[6] On August 24, 2011, the Department received comments from Zhaoqing Tifo.

On September 30, 2011, the Department issued its respondent selection memorandum after assessing its resources and determining that it could reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Zhaoqing Tifo and Far Eastern Industries (Shanghai) Ltd., and Far Eastern Polychem Industries ("Far Eastern") as mandatory respondents.[7] On October 4, 2011, the Department sent antidumping duty questionnaires to Zhaoqing Tifo and Far Eastern.

On October 26, 2011 the Department sent a letter to Far Eastern to inquire why it did not submit a response to the Department's October 4, 2011, questionnaire. On October 27, 2011, the Department received a letter from Far Eastern where it indicated that it would no longer participate in this review.

Surrogate Country and Surrogate Value Data

On November 9, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value ("SV") data.[8] On December 9, 2011, Zhaoqing Tifo submitted comments on surrogate country selection. On January 9, 2012, the Department received information to value factors of production ("FOP") from Zhaoqing Tifo. On January 19, 2012, the Department received a rebuttal response to Zhaoqing Tifo's SV submission from Petitioner. The SVs placed on the record from Zhaoqing Tifo were obtained from sources in Thailand, whereas the SVs placed on the record by Petitioner were from sources in Indonesia.

Scope of the Order

The merchandise subject to this proceeding is synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The subject merchandise may be coated, usually with a silicon or other finish, or not coated. Polyester Staple Fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

The following products are excluded from the scope: (1) Polyester Staple Fiber of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.0025 and known to the industry as polyester staple fiber for spinning and generally used in woven and knit applications to produce textile and apparel products; (2) Polyester Staple Fiber of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and (3) low-melt polyester staple fiber defined as a bi-component fiber with an outer, non-polyester sheath that melts at a significantly lower temperature than its inner polyester core (classified at HTSUS 5503.20.0015).

Certain polyester staple fiber is classifiable under the HTSUS subheadings 5503.20.0045 and 5503.20.0065. Although the HTSUS subheadings are provided for convenience and customs purposes, the

[1] *See Notice of Antidumping Duty Order: Certain Polyester Stuple Fiber from the People's Republic of China*, 72 FR 30545 (June 1, 2007) ("*Order*").

[2] *See Initiation of Antidumping and Countervailing Duty Administrotive Reviews, Requests for Revocations in Purt and Deferrul of Administrative Review*, 76 FR 45227 (July 28, 2011) ("*Initiation Notice*"). Those companies are: Far Eastern Industries, Ltd., (Shanghai) and Far Eastern Polychem Industries; Cixi Jiangnan Chemical Co., Ltd.; Cixi Sansheng Chemical Fiber Co., Ltd.; Zhejiang Waysun Chemical Fiber Co., Ltd., and its affiliate, Cixi Waysun Chemical Fiber Co., Ltd.; Hangzhou Sanxin Paper Co., Ltd.; Nantong Luolai Chemical Fiber Co., Ltd.; Nan Yang Textiles Co., Ltd.; Zhaoqing Tifo New Fiber Co., Ltd.; and Huvis Sichuan Chemical Fiber Corp., and Huvis Sichuan Polyester Fiber Ltd.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Port*, 76 FR 53404 (August 26, 2011).

[4] *See Certuin Polyester Staple Fiber from the People's Republic of Chino: Extension of Preliminary Results of the Antidumping Duty Administrative Review*, 77 FR 6783 (February 9, 2012).

[5] *See Certain Polyester Staple Fiber from the People's Republic of China: Extension of Preliminary Results of the Antidumping Duty Administrative Review*, 77 FR 19619 (April 2, 2012).

[6] *See* the Department's Letter to All Interested Parties regarding 2010–2011 Administrative Review of the Antidumping Duty Order of Certain Polyester Staple Fiber from the PRC: CBP Data for Respondent Selection, dated August 17, 2011.

[7] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Steven Hampton, International Trade Compliance Analyst, Office 9, Import Administration regarding 4th Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the PRC: Response to Petitioner's Comments on CBP Data, dated September 30, 2011 ("Respondent Selection Memo").

[8] *See* the Department's Letter to All Interested Parties regarding Antidumping Duty Order on Polyester Staple Fiber from the People's Republic of China, dated November 9, 2011 ("Surrogate Country Memo").

written description of the merchandise under the orders is dispositive.

Non-Market Economy ("NME") Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[9] Accordingly, the Department has calculated the NV in accordance with section 773(c) of the Act, which applies to NME countries. With the exception of the two mandatory respondents, the Department did not receive a separate rate application or certification from any other party in this proceeding.

Surrogate Country

When the Department conducts an antidumping administrative review of imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, which are valued in the surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the SVs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single country. The sources of the SVs are discussed under the "Normal Value" section below and in the Surrogate Value Memorandum.[10]

On November 9, 2011, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing FOPs. On January 9, 2012, the Department received surrogate country and value comments from Zhaoqing Tifo suggesting that the Department select Thailand as the surrogate country. On January 19, 2012, the Department received surrogate country and value comments from Petitioner suggesting that the Department select Indonesia as the surrogate country. On April 6, 2012, Zhaoqing Tifo submitted additional comments for the preliminary determination arguing that the Department should rely upon Thailand for SVs. On April 18, 2012, Petitioner submitted additional comments arguing that the Department should rely upon Indonesia for SVs.

Pursuant to its practice, the Department received a list of potential surrogate countries from Import Administration's Office of Policy in which it determined that Colombia, Indonesia, Philippines, South Africa, Thailand and Ukraine were at a comparable level of economic development to the PRC.[11] The Department notes that the Surrogate Country List is a non-exhaustive list of economically comparable countries. The Department also notes that the record does not contain publicly available SV factor information for Colombia, Philippines, South Africa, and Ukraine. Because parties submitted no information on the record with respect to whether the potential surrogate countries are significant producers of comparable merchandise, the Department used data from the Global Trade Atlas ("GTA") published by Global Trade Information Services, Inc. to confirm that Indonesia and Thailand are both significant producers of comparable merchandise.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.[12] As a general matter, the Department prefers to use publicly available data representing a broad-market average to value SVs.[13]

The Department notes that Zhaoqing Tifo's surrogate country and value comments includes Thai SVs for all inputs and one financial statement from a single Thai producer of comparable merchandise. In addition, Petitioner's SV submission includes Indonesian SVs for all inputs except energy, labor, and movement, and three financial statements from Indonesian producers of comparable merchandise for the calculation of surrogate financial ratios.

As stated above, with regard to Thailand, the record contains publicly available surrogate factor value information for all of the FOPs. However, the proposed SVs for certain FOPs are "basket" harmonized tariff schedule categories and are not specific to the material inputs consumed by Zhaoqing Tifo during production. Moreover, the Thai financial statement that Petitioner placed on the record from Indorama Ventures Ltd. ("Indorama") does not meet the Department's criteria for selecting it as the best available information, in that Indorama does not share the same level of integration as Zhaoqing Tifo and contains a subsidy that was previously countervailed by the Department.[14]

With regard to Indonesia, the record contains publicly available surrogate factor SVs for most FOPs. With respect to the remaining FOPs (*i.e.*, energy, labor, and movement) the Department has placed Indonesian SVs on the record of this proceeding.[15] Of the three Indonesian financial statements that Petitioner submitted, two of the financial statements are from companies that do not produce identical merchandise in that they produce polyester staple fiber used in woven and knit applications, which is expressly excluded in the scope. However, the financial statement of P.T. Asia Pacific Fibers Tbk. demonstrates that it produces identical merchandise, shares the same level of integration as Zhaoqing Tifo, and does not contain any evidence of countervailable subsidies. Lastly, the Indonesian data on the record is more specific to the FOPs consumed by Zhaoqing Tifo.

Therefore, given the facts summarized above, the Department finds that the information on the record supports a finding that Indonesia is the most appropriate primary surrogate country because Indonesia is at a similar level of economic development to the PRC,

[9] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

[10] *See* Memorandum to the File through Scot T. Fullerton, Program Manager, Office 9 from Steven Hampton, International Trade Analyst, Office 9: 2010–2011 Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Surrogate Values for the Preliminary Results, dated concurrently with this notice ("Surrogate Value Memorandum").

[11] *See* Surrogate Country Memo.

[12] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

[13] *Id.*

[14] *See* Letter from Zhaoqing Tifo regarding Certain Polyester Staple Fiber from the People's Republic of China: Surrogate Values for the Preliminary Determination, dated January 9, 2012 at Exhibit SV–8, page 169. *See also Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand*, 70 FR 13462 (March 21, 2005) and accompanying Issues and Decisions Memorandum at Comment 3A.

[15] *See* Memorandum to the File from Steven Hampton, International Trade Compliance Analyst, Office 9, Import Administration regarding: Placing Indonesian Surrogate Value Sources on the Record: Fourth Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the PRC, dated concurrently with this notice.

pursuant to section 773(c)(4) of the Act, it is a significant producer of comparable merchandise, and reliable, publicly available data have been provided on the record for valuing the FOPs. In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Facts Otherwise Available

Section 776(a)(1) and (2) of the Tariff Act of 1930, as amended ("the Act"), provides that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

As previously noted, Far Eastern did not respond to the antidumping duty questionnaire issued by the Department on October 4, 2011. Additionally, the Department confirmed delivery of the initial questionnaire.[16] On October 26, 2011 the Department sent a letter to Far Eastern to inquire why it did not submit a response to the Department's October 4, 2011, questionnaire. On October 27, 2011, the Department received a letter from Far Eastern where it indicated that it would no longer participate in this review. Given that Far Eastern indicated that it would no longer participate in this review, the Department no longer had the ability to verify or obtain supplemental information from Far Eastern, including its separate rate certification.[17] Therefore, the Department finds that Far Eastern did not cooperate to the best of its ability, and its non-responsiveness necessitates the use of facts available, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act.

Based upon Far Eastern's failure to submit a response to the Department's questionnaire, the Department finds that Far Eastern withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act. Further because Far Eastern failed to demonstrate that it is eligible for a separate rate,[18] the Department considers it to be part of the PRC-wide entity. Thus the Department finds that the PRC-wide entity, including Far Eastern, withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding. Therefore, the Department must rely on the facts otherwise available in order to determine a weighted-average dumping margin for the PRC-wide entity, pursuant to section 776(a)(2)(A), (B) and (C) of the Act.[19]

Adverse Facts Available

Section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority * * * may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."[20] Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[21] In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[22]

Because Far Eastern, which is part of the PRC-wide entity, failed to cooperate to the best of its ability in providing the requested information, as discussed above, the Department finds it appropriate, in accordance with sections 776(a)(2)(A), (B) and (C), as well as section 776(b) of the Act, to assign total adverse facts available ("AFA") to the PRC-wide entity.[23] By doing so, the Department ensures that the PRC-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

As discussed above, section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the less-than-fair-value ("LTFV") investigation, any previous administrative review, or any other information placed on the record. In selecting an AFA rate, the Department's practice has been to assign non-cooperative respondents the highest rate from either the petition, or for any party in the LTFV investigation or for any party in any administrative review.[24] As AFA, the Department is assigning the PRC-wide entity, which includes Far Eastern, the highest rate from any segment of this proceeding, which in this case is 44.30 percent as applied to the PRC-wide entity in the LTFV investigation and originating from the petition.[25]

Corroboration

Section 776(c) of the Act requires that, where the Department relies on secondary information in selecting AFA, the Department corroborates such information to the extent practicable. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.[26]

[16] See the Department's Letter to Far Eastern regarding Certain Polyester Staple Fiber from the People's Republic of China, dated October 26, 2011.

[17] See Letter from Far Eastern to the Secretary of Commerce regarding Polyester Staple Fiber from China, dated September 26, 2011.

[18] In an NME, companies that do not submit a response to the questionnaire or do not adequately establish that they are independent of government control are subject to the single economy-wide rate. In this case, by failing to respond to the antidumping duty questionnaire and impeding the Department's ability to verify its separate rate certification, Far Eastern did not provide evidence that they are independent of government control.

[19] See *Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

[20] See *also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 at 870 (1994) ("SAA").

[21] *Id.*

[22] See section 776(b) of the Act.

[23] See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review*, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity) unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007).

[24] See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008).

[25] See *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007) and accompanying Issues and Decision Memorandum ("*Polyester Staple Fiber Final Determination*").

[26] See SAA at 870; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan:*

Continued

On the issue of reliability, the Department corroborated the AFA rate of 44.30 percent in the LTFV investigation.[27] Where circumstances indicate that the selected rate is not appropriate as AFA, the Department will disregard the rate and determine an appropriate AFA rate. No information has been presented in the current review that calls into question the reliability of this information.

With respect to the relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Prior to this POR, the PRC-wide entity had been assigned a cash deposit and assessment rate of 44.30 percent based upon AFA. This cash deposit rate has remained in effect for the duration of this POR, and, therefore, continues to be indicative of the behavior of the PRC-wide entity. In addition, there is no information on the record of this review that demonstrates that this rate is unrepresentative of the PRC-wide entity's behavior during the POR. For all of these reasons, the Department determines that this rate continues to have relevance with respect to the PRC-wide entity, including Far Eastern.

Therefore, the Department finds that the 44.30 percent is both reliable and relevant as an AFA rate for the PRC-wide entity, that it has probative value, and that it is corroborated to the extent practicable, in accordance with section 776(c) of the Act. The Department has preliminarily assigned 44.30 percent as AFA to the PRC-wide entity, which includes Far Eastern.

Date of Sale

Zhaoqing Tifo reported the invoice date as the date of sale because it claims that, for its U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. The Department preliminarily determines that the invoice date is the most appropriate date to use as Zhaoqing Tifo's date of sale, in accordance with 19 CFR 351.401(i).[28]

Fair Value Comparisons

To determine whether sales of certain polyester staple fiber to the United States by Zhaoqing Tifo were made at less than NV, the Department compared the export price ("EP") to NV, as described in the "U.S. Price," and "Normal Value" sections below. In these preliminary results, the Department applied the average-to-average comparison methodology adopted in the *Final Modification for Reviews*.[29] In particular, the Department compared monthly, weighted-average EPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

U.S. Price—Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for the sales to the United States from Zhaoqing Tifo because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price ("CEP") was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on the reported FOPs and SVs.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOPs methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a ME country and pays for it in a ME currency, the Department may value the FOP using the actual price paid for the input. During the POR, Zhaoqing Tifo purchased certain inputs from ME suppliers and paid for these inputs in a ME currencies.[30] The Department has confirmed that these FOPs were produced in ME countries through supplemental questionnaires. The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.[31] The ME input prices reported by Zhaoqing Tifo exceeded the 33 percent of the total volume purchased from all sources during the period; therefore, the Department has utilized this information to value the FOPs.[32]

In accordance with section 773(c) of the Act, for subject merchandise produced by Zhaoqing Tifo, the Department calculated NV based on the FOPs reported by Zhaoqing Tifo for the POR. The Department used Indonesian import data and other publicly available Indonesian sources in order to calculate SVs for Zhaoqing Tifo's FOPs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available Indonesian SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[33]

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indonesian import SVs, reported on a Cost, Insurance and Freight "CIF" basis, a surrogate freight cost using the shorter of the reported distance from the domestic supplier to

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Final Results of Antidumping Duty Administrotive Reviews ond Termination in Part, 62 FR 11825 (March 13, 1997).

[27] *See Palyester Staple Fiber Final Determination.*

[28] *See also Notice of Final Determination of Soles ot Less Than Foir Value and Negative Finol Determination of Critico! Circumstances: Certain Frozen and Conned Wormwater Shrimp From Thailond*, 69 FR 76918 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 10.

[29] *See Antidumping Proceedings: Calculotion of the Weighted-Average Dumping Margin and Assessment Rate in Certoin Antidumping Proceedings: Finol Modificotion*, 77 FR 8101 (February 14, 2012) ("*Finol Modification for Reviews*").

[30] *See* Zhaoqing Tifo Section D Questionnaire Response, dated December 2, 2011, at 6–7 and Exhibit D–3.

[31] *See Antidumping Methodologies: Market Ecanomy Inputs, Expected Non-Morket Economy Wages, Duty Drawback; ond Request for Conunents*, 71 FR 61716, 61717–18 (October 19, 2006) ("*Antidumping Methodologies*").

[32] *See* Surrogate Value Memorandum at 2 and Attachment #1.

[33] *See, e.g., Electralytic Manganese Dioxide From the People's Republic of China: Finol Determinotion of Soles at Less Thon Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Zhaoqing Tifo did not incur brokerage and handling fees for its ME input purchases.[34]

In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the SVs using, where appropriate, the Indonesian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Prelim Surrogate Value Memo at Attachment 2. Where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kilogram basis.

The Department used Indonesian import data, on a CIF basis, from the GTA which is sourced from Statistics Indonesia, to determine the SVs for certain raw-materials, by-products, packing material inputs, and coal. The Department has disregarded statistics from NME countries with generally available export subsidies, and undetermined countries, in calculating the average SVs. The Department continues to apply its long-standing practice of disregarding import data if it has a reason to believe or suspect the source data may be subsidized.[35] In this regard, the Department has previously found that it is appropriate to disregard such information from India, Indonesia, South Korea and Thailand because the Department has determined that these countries maintain broadly available, non-industry specific export subsidies.[36] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.[37] Lastly, the Department has also excluded imports from Indonesia into Indonesia because there is no evidence on the record regarding what these data represent (*e.g.*, re-importations, another category of unspecified imports, or the result of an error in reporting). Thus, these data do not represent the best available information upon which to rely for valuation purposes.[38]

The Department valued water using data from the 2006 United Nations report titled "*Human Development Report: Disconnected Poverty: Water Supply & Development in Jakarta, Indonesia (Water Supply and Development).*" The Department based the value for water on the 2005 value listed for large hotels, high-rise buildings, banks, and factories. This value was inflated to POR price levels.[39]

The Department valued electricity using Indonesian price data specified in the World Bank's *2003 Electricity for All: Options for Increasing Access in Indonesia, issued in 2003 (Electricity for All).* The electricity rates reported represent actual, country-wide, publicly available information on tax-exclusive electricity rates charged to small, medium, and large industries in Indonesia. This value was inflated to POR price levels.[40]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[41] In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics ("Yearbook").

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies*. To value the mandatory respondents' labor input, the Department attempted to rely on data reported by Indonesia to the ILO in Chapter 6A of the Yearbook. Because Indonesia does not report labor data to the ILO under Chapter 6A, for these preliminary results, the Department is unable to use ILO's Chapter 6A data to value Zhaoqing Tifo's labor wage and instead will use industry-specific wage rate using earnings or wage data reported under ILO's Chapter 5B. The Department finds the two-digit description under ISIC-Revision 3 ("Manufacture of Chemicals and Chemical Products") to be the best available information on the record because it is specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 5B of the Yearbook, the Department calculated the labor input using labor data reported by Indonesia to the ILO under Sub-Classification 24 of the ISIC-Revision 3 standard, in accordance with Section 773(c)(4) of the Act.[42]

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in *Doing Business 2012: Indonesia*, by the World Bank.[43]

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the audited financial statements of P.T. Asia Pacific Fibers Tbk.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist.

[34] *See* Zhaoqing Tifo Section C Questionnaire Response at 22.

[35] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("*OTCA 1988*") at 590.

[36] *See, e.g, Expedited Sunset Review of the Countervoiling Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at pages 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Corbon Quolity Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; *see olso Certain Hot-Rolled Corbon Steel Flot Products from Thailond: Final Results of Countervoiling Duty Determinotion*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at page 23.

[37] For a detailed description of all SVs used for Zhaoqing Tifo, *see* Surrogate Value Memo.

[38] *See Certain Frozen Warmwoter Shrimp from the Socialist Republic of Vietnam: Final Results und Partial Rescission of Antidumping Duty Administrotive Review*, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

[39] *See* Prelim Surrogate Value Memo at Attachments 2 and 14.

[40] *See* Prelim Surrogate Value Memo at Attachments 2 and 15.

[41] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Voluing the Foctor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Lobor Methodologies*").

[42] *See* Prelim Surrogate Value Memo at Attachments 2 and 16.

[43] *See* Prelim Surrogate Value Memo at Attachment 19.

Manufacturer/exporter	Weighted average dumping margin (percent)
Zhaoqing Tifo New Fibre Co., Ltd	*0.21
PRC-wide Entity (which includes Far Eastern Industries (Shanghai) Ltd., and Far Eastern Polychem Industries)	44.30

* *De minimis.*

Disclosure and Public Comment

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[44] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[45] Parties should confirm by telephone the date, time, and location of the hearing. Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. The Department intends to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register.**

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[46] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews*, *i.e.*, on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.[47]

Where the Department calculates a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates. Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[48] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[49]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For Zhaoqing Tifo, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 44.30 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 29, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–16586 Filed 7–5–12; 8:45 am]

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[44] *See* 19 CFR 351.310(c).

[45] *See* 19 CFR 351.310.

[46] *See* 19 CFR 351.212(b).

[47] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8103 (February 14, 2012) ("*Final Modifications for Reviews*").

[48] *See* 19 CFR 351.212(b)(1).

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

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Mechanical Engineering, Texas A&M University, Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by

Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, D.C.

Docket Number: 12–024. *Applicant:* Department of Mechanical Engineering, Texas A&M University, College Station, TX 77843–3123. *Instrument:* Arc melting system. *Manufacturer:* Edmund Beuhler GmbH, Germany. *Intended Use:* See notice at 77 FR 32942, June 4, 2012. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* The unique features of this instrument include the capability of suction casting and ceramic powder feed-through for the addition of oxide nanoparticles during the melting of metals. Suction casting is required to achieve nanocrystalline grains, and ceramic powder feed-through will be used to mix ceramic powders with melted metals to achieve metal based nanocomposites.

Dated: June 29, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–16582 Filed 7–5–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

University of Connecticut, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 12–022. *Applicant:* University of Connecticut, Storrs, CT 06269. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 77 FR 32943, June 4, 2012.

Docket Number: 12–023. *Applicant:* Howard Hughes Medical Institute, Chevy Chase, MD 20815. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 77 FR 32943, June 4, 2012. *Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: June 29, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–16585 Filed 7–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China: Notice of Court Decision Not in Harmony and Notice of Amended Final Results

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

SUMMARY: On June 14, 2012, the United States Court of International Trade (the Court) issued final judgment in *Tianjin Machinery Imp. & Exp. Corp. and Shandong Huarong Machinery Co., Ltd.*, v. *United States*, sustaining the Department of Commerce's (the Department) *Second Remand Results*.[1] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.*, v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results and is amending the final results of the antidumping duty review on heavy forged hand tools, finished or unfinished, with or without handles from the People's Republic of China (PRC) with respect to the margins assigned to Shandong Huarong Machinery Co., Ltd. (Huarong) and Tianjin Machinery Import & Export Co.'s (TMC) covering the period February 1, 2003 through January 30, 2004.[2]

DATES: *Effective Date:* June 25, 2012.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION: The Department published the *Final Results* on September 19, 2005. On August 28, 2007, the Court remanded the *Final Results*, and instructed the Department to either explain or reconsider its determination of the adverse facts available (AFA) rate applied to TMC's and Huarong's sales of bars/wedges, and the AFA rate applied to TMC's sales of picks/mattocks.[3] On March 11, 2008, the Department filed its *First Remand Results* pursuant to the Court's August 28, 2007 order.[4] On January 4, 2011, the Court sustained in part, and remanded, in part, the Department's *First Remand Results*. Specifically, the Court remanded the AFA rates applied to Huarong's bars/wedges, and to TMC's pick/mattocks. On May 4, 2011, the Department filed the *Second Remand Results*, in which the Department recalculated the AFA rates applied to Huarong and TMC. As a result, the Department revised the antidumping margin for Huarong's sales of bars/wedges to 47.88 percent, and revised the antidumping margin for TMC's sales of picks/mattocks to 32.15 percent. On

[1] See Final Results of Redetermination Pursuant to *Tianjin Mochinery Imp. & Exp. Corp. ond Shondong Huorong Machinery Co., Ltd.*, v. *United States*, Consol. Court No. 05–00522, (January 4, 2011), May 4, 2011. (*Second Remand Results*) see *also Tianjin Machinery Imp. & Exp. Corp. ond Shandong Huarong Machinery Co., Ltd.*, v. *United States*, Consol. Court No. 05–00522, Slip Op. 12–83 (June 14, 2012) (Tianjin v. United States).

[2] See *Heovy Forged Hond Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of Chino: Final Results of Antidumping Duty Administrative Reviews ond Final Rescission and Portiol Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005) ("Final Results").

[3] See *Tionjin Machinery Import & Export Corp and Shandong Huarong Mochinery Co., Ltd.* v. *United States*, Court No. 05–00522, Slip Op. 07–131 (August 28, 2007).

[4] *Finol Results of Redeterminotion Pursuant to Tionjin Machinery Import & Export Corp. ("TMC") and Shandong Huroong Machinery Co., Ltd. ("Huorong")* v. *United States and Ames True Temper*, Consol. Court No. 05–00522, Slip Op. 07–131 (August 28, 2007), March 11, 2008 ("*First Remond Results*").

June 14, 2012, the Court sustained the Department's *Second Remand Results*.[5]

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's June 14, 2012, order constitutes a final decision of the Court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for Huarong and TMC for the subsequent and most recent period during which the respondents were reviewed.[6]

Amended Final Determination

Because there is now a final court decision, we are amending the *Final Results* with respect to Huarong and TMC's margin for the period February 1, 2003 through January 30, 2004. The revised weighted-average dumping margins are as follows:

Exporter	Percent margin
Huarong	47.88
TMC	32.15

In the event the Court's ruling is not appealed, or if appealed, upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by Huarong and TMC using the revised assessment rates calculated by the Department in the *Second Remand Results*.

This notice is issued and published in accordance with sections 516(A)(e)(1), 751(a)(1), and 777(i)(1) of the Act.

[5] *See Tianjin v. United States.*

[6] See *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review* and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 71 FR 54269 (September 14, 2006).

Dated: June 28, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–16575 Filed 7–2–12; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Scientific and Statistical Committee (SSC) and the Bluefish, Summer Flounder, Scup, and Black Sea Bass Monitoring Committees of the Mid-Atlantic Fishery Management Council (Council) will hold meetings.

DATES: The SSC will meet Wednesday and Thursday, July 25–26, 2012 beginning at 10 a.m. on July 25 and conclude by 3 p.m. on July 26. In addition, a meeting of the Council Monitoring Committees for bluefish, summer flounder, scup, and black sea bass will also be held on Friday, July 27, 2012 beginning at 8:30 a.m. and conclude by 5 p.m.

ADDRESSES: The meetings will be held at the Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231; telephone: (410) 539–2000.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The primary purpose of the SSC meeting includes: Make 2013 ABC recommendations to the Council for summer flounder, scup, black sea bass and bluefish; review and adopt criteria for establishing multi-year ABC recommendations; develop 2013/2014 research priority list for Council consideration. The primary purpose of the Council Monitoring Committees for bluefish, summer flounder, scup, and black sea bass includes: Developing annual catch target (ACT) recommendations for the Council to consider, as well as commercial and recreational management measures for the upcoming 2013 fishing year.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: July 2, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–16533 Filed 7–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Law Enforcement Advisory Panel (LEAP) in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC).

DATES: The meeting will convene at 8:30 a.m. on Wednesday, July 25, 2012 and conclude no later than 5 p.m. on Thursday, July 26, 2012.

ADDRESSES: The meeting will be held at the Louisiana Wildlife & Fisheries Lab, 195 Ludwig Lane, Grand Isle, LA 70358; telephone: (985) 787–2163.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council will convene the Law Enforcement Advisory Panel along with the Gulf States Marine Fisheries Commission's Law Enforcement Committee to consider the status of recently completed amendments and other regulatory actions as well as the scheduled completion of ongoing actions. The two groups will also receive a presentation regarding issues related to the Gulf Council's Individual Fishing Quota Programs and discuss the National Center for Disaster Fraud/Gulf Coast. They will review the status of Joint Enforcement Agreements and enforcement efforts by the states under these agreements. The LEAP/LEC will also consider having a Summer Work Session to develop a 2013–16 Strategic Plan and a 2013–14 Operations Plan. Finally, the group will discuss Gulf seafood trace and trip ticket enforcement and receive reports of the state and federal members. Other activities related to the Gulf States Marine Fisheries Commission's Interjurisdictional Fisheries Program and Law Enforcement Summary will also be discussed.

The Law Enforcement Advisory Panel consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Law Enforcement, U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, and the NOAA General Counsel for Law Enforcement. A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the Law Enforcement Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Law Enforcement Advisory Panel will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) 5 working days prior to the meeting.

Dated: July 2, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–16553 Filed 7–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC095

Marine Mammals; File No. 17278

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that James Shine, Ph.D., Harvard University School of Public Health, 401 Park Drive, 404H West, Boston, Massachusetts 02215, has applied in due form for a permit to import and receive marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before August 6, 2012.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 17278 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on these applications would be appropriate.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Dr. Shine requests authorization to import and receive parts from subsistence-collected long-finned pilot whales (*Globicephala melas*) archived at the Faroese Museum of Natural History, Foroe Islands. Parts would be analyzed to assess the levels and geographic source of mercury. No animals would be killed for the purpose of providing samples under this permit. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 29, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–16580 Filed 7–5–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB034

Takes of Marine Mammals Incidental to Specified Activities; Pile Placement for Fishermen's Offshore Wind Farm

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Fishermen's Atlantic City Windfarm, LLC (Fishermen's), allowing the take of small numbers of marine mammals, by Level B harassment only, incidental to pile driving off the New Jersey coast.

DATES: Effective May 1, 2013, through August 31, 2013.

ADDRESSES: A copy of the IHA, the application, and the Environmental Assessment are available by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) further established a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On August 30, 2011, NMFS received an application from AMEC Environment & Infrastructure, on behalf of Fishermen's, requesting an IHA for the take, by Level B harassment, of small numbers of bottlenose dolphins, harbor porpoises, and harbor seals incidental to pile driving activities off the New Jersey coast. In accordance with the MMPA and implementing regulations, NMFS issued a notice in the **Federal Register** on March 13, 2012 (77 FR 14736), requesting comments from the public on the proposed IHA.

Description of the Specified Activity

A complete description of the specified activity may be found in NMFS' proposed IHA notice in the **Federal Register** (77 FR 14736, March 13, 2012) and a summary is provided here. Fishermen's plans to construct a 20 megawatt offshore wind farm 4.5 kilometers (km) off the New Jersey coast. The long-term project would comprise a single row of six electric generating windmills. Pile driving is required to construct a jacketed foundation on the sea floor for each turbine, which will result in elevated sound levels.

Fishermen's will install 18 piles to create six jacketed foundations. Each foundation will consist of a three-legged structure, made up of three hollow steel pipes with an outer diameter of about 132 centimeters (cm). Each leg, or pipe, will be driven to a depth of about 46 meters (m) below the sea floor. The foundations will extend through the water column to about 14 m above mean higher high water, depending on tide levels. The top of each foundation will connect to the turbine with a transition piece, which will be welded to the foundation at about 93 m above mean higher high water.

Fishermen's will use a Delmag D–100 or equivalent hydraulic hammer to install the 18 piles. The hydraulic hammer and a lift crane will operate from a barge, which will be used to lift the foundation off a second barge and place it on the seafloor. Each pile will require 2,400–2,700 blows over 4–6 hours. The foundations' jacket structure and design are expected to lessen the amount and intensity of sound propagation.

Fishermen's will also install a submarine electric cable to transmit power from the turbines to the shore. The cable will make landfall at a point in Atlantic City and continue underground to the existing Huron Substation located along Absecon Avenue. Fishermen's will use jet plowing to install the submarine electric cables, which is a common burial method that minimizes environmental impacts to water quality and aquatic natural resources.

Date and Duration of Activity

Fishermen's plans to begin turbine installation and cable laying in the summer of 2013. Construction of the wind farm may take about 4 months, but pile driving activities will occur for a maximum of 24 days, during May and June. Pile driving will only occur in weather that provides adequate visibility for marine mammal monitoring activities.

Region of Activity

The activity will occur in state waters of New Jersey, about 4.5 km from Atlantic City, and the turbines will run roughly parallel to the coast in a single line. This location was chosen over alternative sites in New Jersey waters based on public support. Water depths at the proposed project location are 8 to 12 m at mean lower low water.

Sound Propagation

Sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases

exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level is 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are "re: 20 μPa" and "re: 1 μPa," respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than peak pressures.

Based on sound measurements taken around impact hammers at other in-water locations, source levels during pile driving are estimated to reach about 195 dB RMS. Assuming a practical spreading loss of 15 log R, Fishermen's estimates that the 180-dB (Level A harassment threshold) isopleth for the impact hammer will be about 107 m from the source. The 160-dB (Level B harassment threshold) isopleth will be about 2.6 km from the source. The amount of sound reduction afforded by the jacket structure and design is unknown. Noise associated with other construction activities (e.g., cable laying) is expected to be minimal.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on March 13, 2012 (77 FR 14736). During the 30-day public comment period, the Marine Mammal Commission (Commission) provided the only comments.

Comment 1: The Commission recommends that NMFS require Fishermen's to recalculate the Level A and Level B harassment zones using the revised source level of 195 dB re 1 μPa at 10 m. This recommendation is based on further review of the ICF Jones & Stokes 2009 paper that Fishermen's used for their sound estimates.

Response: Fishermen's acknowledged that they used an incorrect source level and recalculated the Level A and Level B harassment zones using the revised source level of 195 dB. Corrections are addressed throughout this notice.

Comment 2: The Commission recommends that NMFS require Fishermen's to either (1) adjust the preliminary 1,000-m exclusion zone if the exclusion is intended to encompass the Level B harassment zone; or (2) require shut down of pile driving if any ESA-listed species approach or enter the revised Level B harassment zone.

Response: NMFS did not authorize the incidental take of any ESA-listed species. As indicated in the IHA, Fishermen's is required to shut down pile driving operation in order to prevent the unauthorized harassment of a marine mammal.

Comment 3: The Commission recommends that NMFS require Fishermen's to use the in-situ sound propagation measurements at 50 percent power to determine the distance to the Level B harassment threshold during power-down procedures.

Response: Fishermen's will use the in-situ sound propagation measurements at the beginning of pile driving to determine the distance to the Level B harassment threshold during power-down procedures.

Comment 4: The Commission recommends that NMFS require Fishermen's to clarify their monitoring strategy and explain how it will be sufficient for covering the entire Level B harassment zone.

Response: Fishermen's will have two vessel-based protected species observers positioned 600 m from the pile driving equipment, moving in a circular route around the sound source at about 10 knots. This will allow the observers to monitor the entire 1,000-m exclusion zone and also have sufficient view of the 107-m Level A harassment zone. Each observer will be responsible for monitoring a 180-degree field of vision.

Although the Level B harassment zone (2.6 km) will extend beyond the exclusion zone, the protected observers will still be able to monitor part of this area. Their observations will allow Fishermen's to estimate the total Level B harassment that occurs during pile driving.

Comment 5: The Commission recommends that NMFS ensure that mitigation measures can be implemented effectively and the number of takes can be recorded accurately.

Response: Fishermen's exclusion zone exceeds the Level A harassment zone by 893 m. This is a conservative distance that will minimize the chance of a marine mammal being exposed to sound levels at or above 180 dB. Furthermore, the 1,000-m exclusion zone lessens the area in which marine mammals could be exposed to sound levels at or above 160 dB. Protected species observers will be on a separate vessel, able to maneuver around the sound source and cover a much larger area during pile driving operations. Observations of marine mammals will be used to estimate the total amount of take that occurs.

Comment 6: The Commission recommends that NMFS specify that the proposed number of pinniped takes may occur by in-water and in-air harassment when animals are near the sound source.

Response: Fishermen's 1,000-m exclusion zone will minimize the chances of marine mammals being exposed to sound that could cause Level A harassment. For whales and dolphins, NMFS considers this threshold to be 180 dB; and for pinnipeds (seals and sea lions), NMFS considers this threshold to be 190 dB. The 1,000-m exclusion zone extends beyond both of the Level A harassment zones. It is possible that harbor seals beyond the 1,000-m exclusion zone may be exposed to in-water and in-air sound levels considered to be Level B harassment. However, the take numbers that NMFS authorized are considered conservative in that they do not account for mitigation measures and are based on the maximum number of animals expected to occur within the project area—an area much larger than the 1,000-m exclusion zone isopleth. NMFS believes that any takes that may occur during Fishermen's pile driving operations will not exceed the amount authorized by the IHA.

Description of Marine Mammals in the Area of the Specified Activity

There are 42 marine mammal species with confirmed or potential occurrence off the coast of New Jersey. Of these, 20 species are regular inhabitants to the northeast Atlantic Ocean and could occur in the proposed project area at some point during the year. Information on species, status, and distribution was provided in the March 13, 2012 **Federal Register** notice (77 FR 14736).

Fishermen's project area was part of a large, comprehensive ecological baseline study of New Jersey's marine waters (NJDEP, 2010). From January 2008, through December 2009, the New Jersey Department of Environmental Protection surveyed 18,183 km of transects to collect baseline information on the distribution, abundance, and migratory patterns of coastal and marine species. Within Fishermen's project area (a 170-acre area encompassing the future wind turbine array), 611 km of

study transects were dedicated to surveying for marine mammals and sea turtles. Marine mammal data were collected over the 2-year period using shipboard surveys, aerial surveys, and passive acoustic monitoring. Only bottlenose dolphins and a single unidentified seal were observed in the project area.

In January 2011, marine mammal observers were onboard the vessels conducting geophysical and geotechnical surveys of the project area. No marine mammal species were sighted during that time. Fishermen's also conducted pre-construction monitoring of the project area in order to fulfill a New Jersey Department of Environmental Protection requirement. This study was comprised of seven survey track lines, spaced about 2 km apart, and included a 2-km radius buffer zone around the proposed turbine locations. Fishermen's surveyed over 2,601 km of track lines for more than 140 survey hours between May 2010 and May 2011. During this study, observers sighted bottlenose dolphins, fin whales, humpback whales, minke whales, harbor porpoises, and harbor seals. Bottlenose dolphins were most commonly seen and only six mysticetes (baleen whales) were observed during the study. Sightings of fin whales, humpback whales, minke whales, and harbor porpoises were only observed between late September and mid-April. Based on sightings data, habitat preference, seasonality, and the proposed project timeline, marine mammal species other than bottlenose dolphins, harbor porpoises, and harbor seals are highly unlikely to be exposed to sound levels of 160 dB or higher and are not discussed further. Detailed information on the species likely to be harassed during pile driving is provided below.

Bottlenose Dolphin

Bottlenose dolphins are found in a wide variety of habitats at both tropical and temperate latitudes. Depending on their habitat, they might feed on benthic fish, invertebrates, and pelagic or mesopelagic fish. They are often found in groups, most commonly of two to 15 individuals. NMFS currently recognizes 15 stocks of bottlenose dolphins in the Atlantic Ocean. Bottlenose dolphins in the proposed project area will likely be part of the western North Atlantic northern migratory coastal stock. The coastal stock is found along the inner continental shelf and around islands and often moves into or resides in bays, estuaries, and the lower reaches of rivers and has an estimated abundance of 9,604. There are insufficient data to determine the population trends for these stocks. Bottlenose dolphins are not listed under the Endangered Species Act (ESA), but the coastal stock is considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/bottlenosedolphin.htm*. Bottlenose dolphins, like other dolphin species and most toothed whales, are in the mid-frequency hearing group, with an estimated functional hearing range of 150 Hz to 160 kHz (Southall *et al.*, 2007).

Harbor Porpoises

Harbor porpoises reside in northern temperate and subarctic coastal and offshore waters. They are commonly found in bays, estuaries, harbors, and fjords less than 200 m deep. In the western North Atlantic, harbor porpoises range from west Greenland to Cape Hatteras, North Carolina. Harbor porpoises in U.S. waters are divided into 10 stocks, based on genetics, movement patterns, and management. During summer months, harbor porpoises are concentrated in the northern Gulf of Maine and southern Bay of Fundy region. Any harbor porpoises encountered during the proposed project will be part of the Gulf of Maine-Bay of Fundy stock, which has an estimated abundance of 89,054 animals. Population trends for all U.S. stocks of harbor porpoises are currently unknown. Gulf of Maine-Bay of Fundy harbor porpoises are not listed under the ESA nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/harborporpoise.htm*. Harbor porpoises are considered high-frequency cetaceans and their estimated auditory bandwidth (lower to upper frequency hearing cut-off) ranges from 200 Hz to 180 kHz (Southall *et al.*, 2007).

Harbor Seals

Harbor seals are typically found in temperate coastal habitats and use rocks, reefs, beaches, and drifting glacial ice as haul outs and pupping sites. On the east coast, they range from the Canadian Arctic to southern New England, New York, and occasionally the Carolinas. There are an estimated 91,000 harbor seals in the western North Atlantic stock and the population is increasing. There are three well known, long-term haul out sites in New Jersey: Sandy Hook, Barnegat Inlet, and Great Bay. However, the closest haul out (Great Bay) is about 21 km north of the project area. Harbor seal abundance at this site has increased since 1994 and shows strong seasonality, with seals consistently present between November and April (Slocum *et al.*, 1999; Slocum *et al.*, 2005). No other haul out sites were identified during aerial surveys for the ecological baseline study. Harbor seals are considered the most common seal species present in New Jersey waters, although gray seals, harp seals, and hooded seals, also appear in winter months. Harbor seals are not listed under the ESA nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/pinnipeds/harborseal.htm*. Pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.*, 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and underwater, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, pinnipeds can hear frequencies from 75 Hz to 30 kHz (Southall *et al.*, 2007).

Potential Effects on Marine Mammals

Elevated in-water sound levels from pile driving in the project area may temporarily change marine mammal behavior. Elevated in-air sound levels are not considered a concern because the nearest significant pinniped haul-out is 21 km away. However, it is possible that a harbor seal may be exposed to elevated in-air sound levels when it lifts its head out of the water. A detailed description of potential impacts to marine mammals can be found in the March 13, 2012 **Federal Register** notice (77 FR 14736) and is summarized here.

Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels will depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.*, 1995). Marine mammal reactions to sound may depend

on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.*, 2007).

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for when PTS first occurs in marine mammals; therefore, it must be estimated from when TTS first occurs and from the rate of TTS growth with increasing exposure levels. PTS is likely if the animal's hearing threshold is reduced by ≥40 dB of TTS. PTS is considered auditory injury (Southall *et al.*, 2007) and occurs in a specific frequency range and amount. Due to required mitigation measures and source levels in the project area, NMFS does not expect marine mammals to be exposed to sound levels associated with PTS.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, but is recoverable. TTS also occurs in specific frequency ranges; therefore, an animal might experience a temporary loss of hearing sensitivity only between the frequencies of 1 and 10 kHz, for example. The amount of change in hearing sensitivity is also variable and could be reduced by 6 dB or 30 dB, for example. Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) to be a sufficient definition of TTS-onset. NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

A limited number of behavioral studies have been performed to assess the responses of mid-frequency cetaceans (such as bottlenose dolphins) to multiple pulses. Combined data show a range of behavioral responses, from temporary pauses in vocalization for received levels of 80 to 90 dB, to a lack of observable reactions for received levels of 120 to 180 dB (Southall, *et al.*, 2007). Data on behavioral reactions of pinnipeds to multiple pulses is also limited, but suggests that exposures in the 150 to 180 dB range have limited potential to induce avoidance behavior (Southall *et al.*, 2007). Some studies suggest that harbor porpoises may be more sensitive to sound than other odontocetes (Lucke *et al.*, 2009 and Kastelein *et al.*, 2011). Although TTS onset may occur in harbor porpoises at lower received levels (when compared to other odontocetes), NMFS' Level B harassment threshold is based on the onset of behavioral harassment, not TTS. However, the potential for TTS is considered in NMFS' analysis of potential impacts from Level B harassment.

Behavioral Effects

Behavioral responses to sound are highly variable and context-specific. An animal's perception of and response to (in both nature and magnitude) an acoustic event can be influenced by prior experience, perceived proximity, bearing of the sound, familiarity of the sound, etc. (Southall *et al.*, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or populations. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of activities and/or exposed to a particular level of sound.

Impulse Sounds

The only sounds from the activity expected to result in the harassment of marine mammals are impulse sounds associated with impact pile driving. Southall *et al.* (2007) addresses behavioral responses of marine mammals to impulse sounds (like impact pile driving). The studies that address the responses of mid-frequency cetaceans to impulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to boomers), including: Small explosives, airgun arrays, pulse sequences, and natural and artificial pulses. The data show no clear indication of increasing probability and severity of response with increasing received level. Behavioral responses seem to vary depending on species and stimuli. Data on behavioral responses of high-frequency cetaceans to multiple pulses is not available. Although individual elements of some non-pulse sources (such as pingers) could be considered pulses, it is believed that some mammalian auditory systems perceive them as non-pulse sounds (Southall *et al.*, 2007).

The studies that address the responses of pinnipeds in water to impulse sounds include data gathered in the field and related to several different sources, including: Small explosives, impact pile driving, and airgun arrays. Quantitative data on reactions of pinnipeds to impulse sounds is limited, but a general finding is that exposures in the 150 to 180 dB range generally have limited potential to induce avoidance behavior (Southall *et al.*, 2007).

No impacts to marine mammal reproduction are anticipated because there are no known pinniped rookeries or cetacean breeding grounds within the proposed project area. Marine mammals may avoid the area around the hammer, thereby reducing their exposure to elevated sound levels. NMFS expects any changes in marine mammal behavior to be temporary, Level B harassment (e.g., avoidance or alteration of behavior). Fishermen's conservatively assumes a maximum of 24 pile driving days may occur over the validity of the IHA. Marine mammal injury or mortality is not likely, as the 180 dB isopleth (NMFS' Level A harassment threshold for cetaceans) for the impact hammer is expected to be about a 100-m radius.

Anticipated Effects on Habitat

The installation of piles and submarine electric cable will cause temporary disturbance and limited, but permanent, loss of benthic habitat. These effects will be limited to the area within the project footprint and along the cable route where sediment-disturbing activities will occur. The cable installation process will temporarily affect benthic resources and habitat by entrainment of microorganisms and displacement or burial of other benthic resources. However, since the jetting and cable laying process occurs very slowly (less than 1 knot speed by the vessel), most mobile organisms are likely to avoid the area. Installation may result in a temporary loss of forage items and a temporary reduction in the amount of benthic habitat available for foraging marine mammals. However, there are no known foraging grounds around the project area, so marine mammals in the area will likely be traveling or foraging opportunistically. The cable route has been designed to avoid submerged

aquatic vegetation. Impacts associated with cable installation and vessel anchoring will be temporary and localized.

Pile driving (resulting in temporary ensonification) may cause prey species and marine mammals to avoid or abandon the area; however, these impacts are expected to be local and temporary. Installation of the jacketed foundations and associated scour protection will result in the permanent loss of less than one acre of benthic habitat. However, this loss is not likely to have a measurable adverse impact on marine mammal foraging activity due to the limited size and lack of known or significant foraging grounds in the proposed project area. The total impacted area represents less than one percent of similar bottom habitat in the proposed project area. Furthermore, the vertical foundation structure that will be added to the environment may provide additional habitat and foraging opportunities to marine species. The effects of habitat loss or modification to marine mammals are expected to be insignificant or discountable.

Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. There are no relevant subsistence uses of marine mammals implicated by this action. Fishermen's will be required to employ the following mitigation measures during pile driving operations:

Exclusion Zone

The purpose of Fishermen's exclusion zone is to prevent Level A harassment (injury) of any marine mammal species. Fishermen's will establish a radius around each pile driving site that will be continuously monitored for marine mammals. If a marine mammal is observed nearing or entering this perimeter, Fishermen's will reduce hammering power (or stop hammering) to reduce the sound pressure levels. More specifically, Fishermen's will establish a preliminary 1,000-m exclusion zone around each pile driving site, based on the estimated rates of sound attenuation discussed earlier in this notice. This distance will encompass the estimated 180-dB isopleth, within which injury could occur, plus an additional 893-m buffer. Fishermen's will perform field verification of the impact hammer's resulting sound pressure levels to ensure that estimated distances to the 180-dB (Level A) and 160-dB (Level B) isopleths are accurate. Once hydroacoustic monitoring is conducted, the exclusion zone may be adjusted accordingly, with input from NMFS, so that marine mammals are not exposed to Level A harassment sound pressure levels.

The exclusion zone will be monitored continuously during impact pile driving to ensure that no marine mammals enter the area. If a marine mammal is nearing or enters the 1,000-m zone, hammering will be reduced to 50 percent capacity, which will reduce the distance to the 160-dB isopleth. If a marine mammal continues to move toward the 107-m Level A harassment zone, Fishermen's will stop all pile driving operations in order to prevent Level A harassment to marine mammals. Fishermen's initially proposed having a single protected species observer (PSO) to monitor the exclusion zone. However, following NMFS recommendation, Fishermen's will use two PSOs, each responsible for monitoring a 180-degree field of vision. The PSOs will be stationed aboard a dedicated support vessel that will patrol the exclusion zone throughout pile driving.

Pile Driving Shut Down and Delay Procedures

If a PSO sees a marine mammal within or approaching the exclusion zone (1,000 m) prior to start of impact pile driving, the observer will notify the construction manager (or other authorized individual) who will then be required to delay pile driving until the marine mammal leaves the exclusion zone or if the animal has not been resighted within 15/30 minutes (pinnipeds/cetaceans). If a marine mammal is sighted within or approaching the exclusion zone during pile driving, pile driving will be reduced to 50 percent capacity, which will reduce the size of the Level B harassment zones. The 107-m Level A harassment zone will be maintained throughout pile driving, regardless of power level. This conservative measure will ensure that the area is clear of marine mammals prior to the hammer operating at full capacity. If an animal continues to approach the 107-m Level A harassment zone after pile driving is reduced to 50 percent capacity, then pile driving operations will be stopped until the animal has left the exclusion zone or 30 minutes have passed since the last sighting.

Soft-Start Procedures

A "soft-start" technique will be used at the start of each pile installation to allow marine mammals that may be in the area to leave before the hammer reaches full energy. Soft starts require an initial set of three strikes from the impact hammer at 40 percent energy with a 1-minute waiting period between subsequent three-strike sets. If a marine mammal is observed within the exclusion zone prior to pile driving, or during the soft start, the construction manager (or other authorized individual) will delay pile driving until the animal has moved outside of the exclusion zone or 15/30 (pinnipeds/cetaceans) minutes have passed since the last sighting. Soft-start procedures will be conducted any time hammering stops for more than 30 minutes.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Fishermen's will verify estimated sound levels to ensure that the Level A and Level B harassment zones are accurate. Fishermen's will take sound measurements during the pile driving of the first three jacket foundations. As recommended by the Commission, in-situ measurements will also be used to measure the Level B harassment zone when the pile hammer is at 50 percent capacity. Fishermen's will establish one reference location at a distance of 100 m from the sound source. They will take sound measurements from the reference location at two depths (one near the middle of the water column and one near the bottom of the water column). Two additional in-water measurements will be taken in two different directions of the pile driving site. Sound measurements will also be recorded 10 m from the sound source, as necessary, to determine the source level and affirm the distances to the Level B and Level A harassment zones. Fishermen's will integrate 90 percent of the energy window from each blow into their sound analysis when computing RMS sound pressure levels.

As explained in the Mitigation Measures section of this notice, there will be two PSOs monitoring the exclusion zone (1,000 m). PSOs will monitor the exclusion zone for at least 30 minutes prior to soft start, during pile driving, and for 30 minutes after pile driving is completed. PSOs will have the equipment needed to effectively monitor for marine mammals (for example, high-quality binoculars, compass, and range-finder), determine if animals have entered into the exclusion zone, and record species, behaviors, and responses to pile driving. Fishermen's will provide weekly status reports to NMFS that include a summary of the previous week's monitoring activities and an estimate of the number of marine mammals that may have been harassed as a result of pile driving. PSOs will submit a comprehensive report to NMFS within 90 days of completion of pile driving. The report will include data from marine mammal sightings (such as date, time, location, species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting and environmental data for the period (wind speed and direction, Beaufort sea state, cloud cover, and visibility).

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury, or mortality, Fishermen's will immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hrs preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hrs preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Fishermen's to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Fishermen's may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Fishermen's discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), Fishermen's will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Fishermen's to determine whether modifications in the activities are appropriate.

In the event that Fishermen's discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Fishermen's will report the incident within 24 hours of the discovery to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the NMFS Northeast Stranding Hotline (866–755–6622) and/or by email to the Northeast Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*). Fishermen's will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.*, 2007). Potential for behavioral Level B harassment is considered to have occurred when marine mammals are exposed to in-water sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for non-pulse noise (such as vibratory pile driving).

Fishermen's calculated distances to NMFS' harassment thresholds are based on the expected source level of the impact hammer and the expected attenuation rate of sound. Fishermen's exclusion zone extends 893 m beyond the Level A harassment zone, which minimizes potential impacts to marine mammals from increased sound exposure. The difference between the exclusion zone (1,000 m) and the Level A harassment threshold (107 m) for cetaceans provides PSOs time and adequate visibility to prevent marine mammals from being exposed to injurious sound levels if an animal (e.g., a small dolphin or pinniped) enters the exclusion zone undetected.

Fishermen's estimated the number of marine mammals potentially taken by using their 2010–2011 pre-construction survey data as site-specific density estimates for the project area over a 1-year period. During that survey, Fishermen's observed 260 bottlenose dolphins, three humpback whales, two fin whales, one minke whale, two harbor seals, and five harbor porpoises. However, the survey was performed over a 1-year period, whereas pile driving will only take place between May and June. The only marine mammal species observed during May and June were bottlenose dolphins and an unidentified seal. Fishermen's considered the expected number of pile driving days and requested authorization for the Level B incidental take of five bottlenose dolphins. NMFS determined that this number does not

adequately account for the likelihood that numerous animals went undetected during visual surveys. To account for this, NMFS multiplied species group size by the maximum number of pile driving days. More specifically, NMFS used the average group size of bottlenose dolphins observed between May and June during the pre-construction survey and multiplied this number by 24 (the maximum number of pile driving days). Because harbor porpoises were never observed during the months of May and June, NMFS conservatively used the maximum group size (two) of harbor porpoises observed during the entire pre-construction survey. NMFS also used the maximum group size (two) of harbor seals observed during the entire pre-construction survey. These calculations are illustrated below in Table 2.

TABLE 2—NMFS' METHOD FOR CALCULATING POTENTIAL TAKES OF MARINE MAMMALS DURING FISHERMEN'S PILE DRIVING OPERATIONS

Species	Group size	Maximum Number of pile driving days	Authorized take [1]
Bottlenose dolphin	[2]5	24	120
Harbor porpoise	[3]2	24	48
Harbor seal	[3]2	24	48

[1] Authorized take was calculated by multiplying group size and the maximum number of pile driving days.
[2] NMFS used the average group size of bottlenose dolphins observed during the pre-construction survey for the months of May and June (when pile driving will occur).
[3] NMFS conservatively used the maximum group size of harbor seals observed during the entire pre-construction survey.

NMFS is authorizing the take of 120 bottlenose dolphins, 48 harbor porpoises, and 48 harbor seals. The increase in proposed take is based on the likelihood that smaller animals may not have been detected during surveys, but may be present in the proposed project area during pile driving. These numbers are conservative in that they do not account for mitigation measures and are based on the maximum number of animals expected to occur within the project area—an area much larger than the 1,000-m exclusion zone isopleth. Pile driving operations will occur during months when other marine mammal species are unlikely to be in the area.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a number of factors which include the number of anticipated injuries or mortalities (none of which are authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals will not be exposed to activities or sound levels which will result in injury (PTS), serious injury, or mortality. The project area is not considered significant habitat for marine mammals and the closest significant pinniped haul out is 21 km away, which is well outside the project area's largest harassment zone. Marine mammals around the action area will likely be traveling or opportunistically foraging. The amount of take NMFS authorized is considered small (less than two percent of each species) relative to the estimated populations of 9,604 bottlenose dolphins, 89,054 harbor porpoises, and 91,000 harbor seals. Marine mammals may be temporarily impacted by pile driving noise. However, marine mammals may avoid the area, thereby reducing exposure and impacts, and mitigation measures will minimize any behavioral harassment and reduce the risk of injury or mortality. Pile driving operations will occur for 15–24 days. NMFS does not expect any changes to annual rates of recruitment or survival of marine mammals exposed to elevated sound levels.

Based on analysis in this notice, the proposed IHA notice (77 FR 14736, March 13, 2012), and the application, and taking into consideration the implementation of mitigation and monitoring measures, pile driving operations may result in, at most, short-term modification of behavior by small numbers of marine mammals. Marine mammals may avoid the area or temporarily alter their behavior at time of exposure. NMFS has determined that Fishermen's pile driving operations will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

NMFS has determined that pile driving operations during May and June will not impact species or critical habitat protected under the ESA. Therefore, consultation under section 7 is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the environmental impacts of issuing a 1-year IHA. NMFS analysis resulted in finding of no significant impact (FONSI). The EA and FONSI are available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Dated: June 27, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY11

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort Sea, Alaska

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to BP Exploration (Alaska), Inc. (BP) to take, by harassment, small numbers of 10 species of marine mammals incidental to ocean bottom cable (OBC) seismic surveys in the Simpson Lagoon area of the Beaufort Sea, Alaska, during the 2012 Arctic open-water season.

DATES: Effective July 1, 2011, through October 15, 2012.

ADDRESSES: Inquiry for information on the incidental take authorization should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application containing a list of the references used in this document, NMFS' Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401 or Brad Smith, NMFS, Alaska Region, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

NMFS received an application on December 20, 2011, from BP for the taking, by harassment, of marine mammals incidental to a 3D OBC seismic survey in the Simpson Lagoon area of the Alaskan Beaufort Sea during the open water season of 2012.

Description of the Specified Activity

The proposed seismic survey utilizes receivers (hydrophones and geophones) connected to a cable that would be deployed from a vessel to the seabed or would be inserted in the seabed in very shallow water areas near the shoreline. The generation of 3D seismic images requires the deployment of many parallel cables spaced close together over the area of interest. Therefore, OBC seismic surveys require the use of multiple vessels for cable deployment and recovery, data recording, airgun operation, re-supply, and support. The proposed 3D OBC seismic survey in Simpson Lagoon would be conducted by CGGVeritas.

Seismic Source Arrays

A total of three seismic source vessels (two main source vessels and one mini source vessel) would be used during the proposed survey. The sources would be arrays of sleeve airguns. Each main source vessel would carry an array that consists of two sub-arrays. Each sub-array contains eight 40 in^3 airguns, totaling 16 guns per main source vessel with a total discharge volume of 2×320 in^3, or 640 in^3. This 640 in^3 array has an estimated source level of ~223 dB re 1 µPa (rms). The mini source vessel would contain one array with eight 40 in^3 airguns for a total discharge volume of 320 in^3. The estimated source level of this 320 in^3 array is 212 dB re 1 µPa (rms).

The arrays of the main source vessels would be towed at a distance of ~30 feet (ft, or 10 m) from the stern at 6 ft (2 m) depth, which is remotely adjustable if needed. The array of the mini source vessel would be towed at a distance of ~20 ft (7 m) from the stern at 3 ft (1 m) depth, also remotely adjustable when needed. The source vessels will travel along pre-determined lines with a speed varying from ~1 to 5 knots, mainly depending on the water depth. To limit the duration of the total survey, the source vessels would be operating in a flip-flop mode, with the operating source vessels alternating shots; this means that one vessel discharges airguns when the other vessel is recharging. Outside the barrier islands, the two main source vessels would be operating with expected shot intervals of 8 to 10 seconds, resulting in a shot every 4 to 5 seconds due to the flip-flop mode of operation. Inside the barrier islands all three vessels (the two main source vessels and the mini vessel) may be operating at the same time in this manner. The exact shot intervals would depend on the compressor capacity, which determines the time needed for the airguns to be recharged. Seismic data acquisition would be conducted 24 hours per day.

Receivers and Recording Units

The survey area in Simpson Lagoon has water depths of 0 to 9 ft (0 to 3 m) between the shore and barrier islands and 3 to 45 ft (1 to 15 m) depths north of the barrier islands. Because different types of receivers would be used for different habitats, the survey area is categorized by the terms onshore, islands, surf-zone and offshore. Onshore is the area from the coastline inland. Islands are the barrier islands. Surf zone is the 0 to 6 ft (0 to 2 m) water depths along the onshore coastline. Offshore is defined as depths of 3 ft (1 m) or more. There is a zone between 3 and 6 ft (1 and 2 m) which may be categorized both as surf zone and as offshore.

The receivers that would be deployed in water consist of multiple hydrophones and recorder units (Field Digitizing Units or FDUs) placed on Sercel ULS cables. Approximately 5,000 hydrophones would be connected to the ULS cable at a minimum of 82.5 ft (27.5 m) intervals and secured to the ocean bottom cable. Surface markers and acoustic pingers will be attached to the cable at various intervals to ensure that the battery packs can be located and retrieved when needed and to determine exact positions for the hydrophones. This equipment would be deployed and retrieved with cable boats. The data received at each FDU would be transmitted through the cables to a recorder for further processing. This recorder will be installed on a boat-barge combination and positioned close to the area where data are being acquired. While recording, the boat-barge combination is stationary and expected to utilize a two or four point anchoring system.

In the surf-zone, receivers (hydrophones or geophones) would be bored or flushed up to 12 ft (4 m) below the seabed. These receivers will transmit data through a cable (as described above) and have an attached line to facilitate retrieval after recording is completed.

Autonomous recorders (nodes) would be used onshore and on the islands. The node is located on the ground and its geophone would be inserted into the ground by hand with the use of a planting pole. Deployment of the autonomous receiver units would be done by a lay-out crew on the ground using helicopters for personnel and equipment transport and/or approved summer travel vehicles (onshore) and a support boat (for the islands). Data from nodes can be remotely retrieved from a distance (up to a kilometer). Retrieval of data may be from a boat or a helicopter. Equipment would be picked up after recording is complete.

Survey Design

The total area of the proposed seismic survey is approximately 110 mi^2, which includes onshore, surf-zone, barrier islands, and offshore (see Figure 1.2 of the BP's IHA application). For the proposed survey, the receiver cables with hydrophones and recording units would be oriented in an east-west direction. A total of approximately 44 receiver lines would be deployed at the seafloor with 1,100–1,650 ft (367–550 m) line spacing. Total receiver line length would be approximately 500 miles (825 km). The source vessel would travel perpendicular over the offshore receiver cables along lines oriented in a north-south direction. These lines would have a length of approximately 3.75 miles (6.2 km) and a minimum spacing of 660 ft (220 m). The total length of all source lines is approximately 4,000 miles (6,600 km), including line turns.

The position of each receiver deployed onshore, in the surf zone and on the barrier islands will be determined using Global Positioning System (GPS) positioning units. Due to the variable bathymetry of the survey area, determining positions of receivers deployed in water may require more than one technique. A combination of Ocean Bottom Receiver Location (OBRL), GPS and acoustic pingers will be used. For OBRL, the source vessel fires a precisely positioned single energy source multiple times along either side of the receiver cables. Production data may also be used instead of dedicated OBRL acquisition. Multiple energy sources are used to triangulate a given receiver position. In addition, Sonardyne acoustical pingers would be located at predetermined intervals on the receiver lines. The pingers are located on the ULS cables and transmit a signal to a transponder mounted on a vessel. This allows for an interpolation of the receiver locations between the acoustical pingers on the ULS cable and also serves as a verification of the OBRL method. The Sonardyne pingers transmit at 19–36 kHz and have a source level of 188–193 dB re µPa at 1m.

Vessels and Other Equipment

The proposed Simpson Lagoon OBC seismic survey would involve 14 to 16 vessels, as listed in Table 1 below.

TABLE 1—SUMMARY OF NUMBER AND TYPE OF VESSELS INVOLVED IN THE PROPOSED SIMPSON LAGOON OBC SEISMIC SURVEY

[The dimensions provided are approximate]

Vessel type	Number	Dimensions	Main activity	Frequency
Source Vessel: Main	2	71 × 20 ft	Seismic data acquisition inside and outside barrier islands.	24-hr operation.
Source Vessel: Mini	1	55 × 15 ft	Seismic data acquisition inside barrier islands	24-hr operation.
Recorder barge with tug boat.	1	116.5 × 24 ft (barge); 23 × 15 ft (tug).	Seismic data recording	24-hr operation.
Cable boats	5–6	42.6 × 13 ft	Deploy and retrieve receiver cables (with hydrophones/geophones).	24-hr operation.
Crew transport vessels	2	44 × 14 ft	Transport crew and supplies to and from the working vessels.	Intermittently, minimum every 8 hours.
Shallow water crew and support boats.	2–3	34 × 10.5 ft	Transport 2–5 people and small amounts of gear for the boats operating in the shallower parts of the survey area.	Intermittently.
HSSE vessel	1	38 × 15 ft	Support SSV measurements, HSSE (health, safety, security, and environmental) compliance.	As required.

To deploy and retrieve receivers in water depths less than those accessible by the cable boats (surf-zone), equipment such as airboats, buggies or an Arktos (amphibious craft) and/or Jon boats may be used. Helicopters and/or approved tundra travel vehicles would be used for deployment of receiver units onshore as well on the barrier islands. In the case of helicopters being used, the flight altitude would be at 1,500 feet for 3 to 6 times each day during gear deployment and retrieval on barrier islands and on shore (i.e., for about 14 days in late July and early August for deployment and for about 14 days probably after the Cross Island hunt, which typically ends around September 10).

Vessels and other equipment would be transported to the North Slope in late May/early June by trucks. Equipment would be staged at the CGGVeritas pad for preparation. Vessel preparation would include assembly of navigation and source equipment, cable deployment and retrieval systems and safety equipment. Once assembled, vessels would be launched at either West Dock or Milne Point. Deployment, retrieval, navigation and source systems will then be tested near West Dock or in the project area prior to commencement of operations.

Crew Housing and Transfer

The total number of people that would be involved is about 220, including crew on boats, camp personnel, mechanics, and management. There are no accommodations available on the source vessels or cable boats for the crew directly involved in the seismic operations, so crews would be changed out every 8 to 12 hours. Two vessels would be used for crew transfers.

The recorder barge/boat (*M/V Alaganik* and *Hook Point*) may accommodate up to 10 people. The barge portion is dedicated to recording and staging of cables, hydrophones and batteries and fuelling operations.

Refueling of vessels would be via other vessels at sea, and from land based sources located at West Dock and Milne Point Unit following approved U.S. Coast Guard procedures. Sea states and the vessel's function will be the determining factors on which method is used.

Dates, Duration and Action Area

BP seeks an incidental harassment authorization for the period July 1 to October 15, 2012. Anticipated duration of seismic data acquisition is approximately 50 days, depending on weather and other circumstances. Transportation of vessels to West Dock would occur by road in late May/early June. It is not anticipated that vessels would need to transit by sea; however, in case this does occur the transit would take place when ice conditions allow and in consideration of the spring beluga and bowhead hunt in the Chukchi Sea.

The project area encompasses 110 mi^2 in Simpson Lagoon, Beaufort Sea, Alaska. The approximate boundaries of the total surface area are between 70°28′ N and 70°39′ N and between 149°24′ W and 149°55′ W (Figure 1.2 of BP's IHA application). About 46 mi^2 (41.8%) of the survey area is located inside the barrier islands in water depths of 0 to 9 ft (0 to 3 m), and 36 mi^2 (32.7%) outside the barrier islands in water depths of 3 to 45 ft (1 to 15 m). The remaining 28 mi^2 (25.5%) of the survey area is located on land (onshore and barrier islands), which is solely being used for deployment of the receivers. The planned start date of seismic data acquisition offshore of the barrier islands is July 1, 2012, depending on the presence of ice. Open water seismic operations can only start when the project area is ice free (i.e. < 10% ice coverage), which in this area normally occurs around mid-July (± 14 days). However, BP will not start seismic surveys with airgun operations within the barrier islands before July 25, 2012. Limited layout of receiver cables might be possible on land and barrier islands before the ice has cleared. To limit potential impacts to the bowhead whale migration and the subsistence hunt, no airgun operations would take place in the area north of the barrier islands after August 25, 2012. Surf zone geophone retrieval may continue for a brief period after airgun operations are complete.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to BP was published in the **Federal Register** on May 1, 2012 (77 FR 25830). That notice described, in detail, BP's proposed activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals and the availability of marine mammals for subsistence uses. During the 30-day public comment period, NMFS received three comment letters from the following: The Marine Mammal Commission (Commission), the Alaska Eskimo Whaling Commission (AEWC), and ten private citizens, and a petition letter requesting denial of BP's IHA application.

Any comments specific to BP's application that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

Comment 1: The Commission and AEWC recommended that NMFS continue to include proposed incidental harassment authorization language at the end of **Federal Register** notices but ensure that the language is consistent with that referenced in the main body of the **Federal Register** notice.

Response: NMFS agrees that this is a good recommendation and will try to include proposed incidental harassment authorization language at the end of **Federal Register** notices if there is sufficient time allowing for drafting the IHA language before the proposed IHA **Federal Register** notice is issued. NMFS will also try to ensure that the language is consistent with that referenced in the main body of the **Federal Register** notice.

Comment 2: The Commission recommends NMFS use species-specific maximum density estimates or average estimates adjusted by a precautionary correction factor as a basis for (1) estimating the expected number of takes and (2) making its determination regarding whether the total taking would have a negligible impact on the species or stocks. Further, the Commission points out that NMFS used Brandon *et al.* (2011) data for bowhead whale density estimates but not for belugas summer density of 0.0018 whales/km^2. The Commission questions why NMFS uses the summer density estimate for belugas of 0.0008 whales/km^2, which was derived from aerial surveys conducted in 1982 to 1986 (Moore *et al.* 2000).

Response: To provide some allowance for the uncertainties, BP calculated both "maximum estimates" as well as "average estimates" of the numbers of marine mammals that could potentially be affected. For a few marine mammal species, several density estimates were available, and in those cases the mean and maximum estimates were determined from the survey data. In other cases, no applicable estimate (or perhaps a single estimate) was available, so adjustments were used to arrive at "average" and "maximum" estimates. The species-specific estimation of these numbers is provided in the **Federal Register** notice for the proposed IHA (77 FR 25830; May 1, 2012). NMFS has determined that the average density data of marine mammal populations will be used to calculate estimated take numbers because these numbers are based on surveys and monitoring of marine mammals in the vicinity of the proposed project area. For several species whose average densities are too low to yield a take number due to extra-

limital distribution in the vicinity of the proposed Beaufort Sea survey area, but whose chance occurrence has been documented in the past, such as gray and killer whales and harbor porpoises, NMFS allotted a few numbers of these species to allow unexpected takes of these species.

The determination regarding whether the total taking would have a negligible impact on the species or stocks is based on the species-specific average density, or based on allotted number from past chance occurrence, as described above and in the proposed **Federal Register** notice for the proposed IHA (77 FR 25830).

Regarding the reason for using older data for beluga whales summer density, there were several reasons for using the data reported in Moore *et al.* (2000):

(1) It has been common practice to use data published in peer reviewed journals if these are available for the area and time period of the proposed activity.

(2) Since the Simpson Lagoon seismic survey data will take place mainly in water depths of ≤10 m, the data from 11,985 km of effort collected in water depths of ≤50 m (Moore *et al.* 2000) was thought to be the most representative.

Comment 3: The Commission requested NMFS provide additional justification for its preliminary determination that the proposed monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified exclusion and disturbance zones.

Response: The proposed visual monitoring measures for open water seismic and geophysical surveys is a standard mitigation method used by industry and research institutes to reduce potential impacts to marine mammals that might be present in the vicinity of the action area. However, as noted in the **Federal Register** notice for the proposed IHA, there is no guarantee that all marine mammals within or entering the identified exclusion and disturbance zones would be immediately detected. Monitoring reports from the past have indicated that individual marine mammals have been found within the exclusion zone during the survey, which prompted timely power-down and shut down of seismic airguns. Other means to reduce marine mammal injury and TTS include pre-activity ramp-up and restricting cold start during darkness and inclement weather when the entire 180-dB zone is not visible without using night vision devices (NVDs) and/or forward looking infrared (FLIR). Therefore, although there is no guarantee that all marine mammals within or entering the identified exclusion zones would be immediately detected, NMFS is confident that it is very unlikely a marine mammal could be injured or receive TTS from exposure to a seismic impulse.

Comment 4: The Commission recommends NMFS restrict the commencement of ramp-up from a full shut-down at night or in periods of poor visibility, regardless of whether the entire 180-dB re 1 μPa exclusion zone is visible. The Commission states that it is questioning the effectiveness of using vessel lights, night vision devices, and/or forward looking infrared to monitor the exclusion zones prior to ramp-up procedures at night or in periods of poor visibility.

Response: NMFS agrees with the Commission's recommendation that no ramp-up from a full shut-down should occur at night or in periods of poor visibility. NMFS further clarified with the Commission that if the entire 180-dB exclusion zone is not visible without using vessel lights, night vision devices, and/or forward looking infrared, then BP should not ramp up from a full shut-down. However, if the entire 180-dB zone is visible without using these devices, then a ramp-up from the full shut-down can be commenced.

Comment 5: The Commission recommends that NMFS specify reduced vessel speeds of 9 knots or less when whales are within 300 m or when weather conditions reduce visibility.

Response: NMFS agrees with the Commission's recommendation that vessels should reduce speed to 9 knots or less when weather conditions reduce visibility. NMFS has specified this additional condition in the final IHA issued to BP. Consistent with the proposed IHA, NMFS is also requiring BP to reduce vessel speed to less than 5 knots within 300 yards (900 feet or 274 m) of any whale(s).

Comment 6: The Commission recommends that NMFS require BP to report injured and dead marine mammals to NMFS and local stranding network using NMFS' phased approach to reporting, as outlined in the proposed incidental harassment authorization language at the end of the **Federal Register** notice for the proposed IHA (77 FR 25830; May 1, 2012).

Response: NMFS agrees with and is implementing the Commission's recommendation.

Comment 7: The AEWC states that it is not clear on the limitation on geophysical activity inside the barrier islands prior to July 25th. The AEWC states that the activities proposed by BP are governed by Section 502(a)(2)(A) of the Conflict Avoidance Agreement (CAA), and that BP is not to conduct geophysical activity inside the barrier islands prior to July 25, 2012. However, the AEWC points out that the **Federal Register** notice for the proposed IHA (77 FR 25830; May 1, 2012) only poses restrictions on BP's seismic activities after August 25, 2012, outside the barrier islands.

Response: After clarifying with BP, NMFS confirmed that BP will not conduct seismic surveys using airguns within the barrier islands prior to July 25, 2012, as agreed in the CAA. NMFS has included this additional condition in the final IHA issued to BP.

Comment 8: The AEWC recommends NMFS consider incorporating an alternative based off of the CAA process into the final *Effects of Oil and Gas Activities in the Arctic Ocean Environmental Impact Statement* (EIS) on the effects of oil and gas activities in the Arctic Ocean, as they requested in their comments, and this IHA provides an example of how the process can and should function properly to the benefit of the local community, offshore operators, and the federal government.

Response: This recommendation is not directly related to the issuance of the IHA to BP for the take of marine mammals incidental to its OBC seismic survey in the Simpson Lagoon area of the Beaufort Sea. However, NMFS will continue to work with the AEWC, other Alaska Native marine mammal commissions, and other stakeholders on this issue and others during preparation of the Environmental Impact Statement.

Comment 9: The AEWC states that NMFS's preliminary decision of not requiring BP to have PAM is questionable because the issue of acoustic monitoring has been on the table for many years. AEWC supports the peer review recommendation that PAM needs to be included to monitor for calling marine mammals, and to evaluate calling rates relative to seismic operations or received levels of seismic sounds.

Response: NMFS does not agree with the AEWC's recommendation. The Simpson Lagoon project was designed to avoid the use of airguns outside of the barrier islands during the bowhead whale migration. Because airgun use will be restricted to areas inside the barrier islands during the bowhead migration north of Simpson Lagoon, and because the barrier islands block much of the sound from airguns and the depths inside the barrier islands are not sufficient to efficiently carry the long wavelength (low frequency) sounds that dominate airgun spectra, sounds above 120 dB are not expected to reach the

migration corridor when whales are present. While methods using directional hydrophones to localize whale calls can offer a powerful means of detecting subtle changes in whale call distributions related to industrial activities, the sounds being introduced by the Simpson Lagoon project during the migration will be weak and the number of days of exposure will be small. With that in mind, operations such as that at Simpson Lagoon would be very unlikely to add anything to our understanding of bowhead whale responses to industrial sounds. Other work that has already been completed (such as the work at Northstar Island for sounds associated with production and the work done by Shell and others to assess responses to airgun sounds) have the capacity to add to our understanding of bowhead whale responses to industrial sounds, but the circumstances surrounding the Simpson Lagoon project suggest that it would fail to produce meaningful (statistically significant) results.

Because of doubts regarding the value of an acoustic localization study undertaken in association with the Simpson Lagoon project, and because timing would haye made study design and implementation challenging, BP explored other opportunities to contribute to our collective understanding of potential acoustic impacts in the Beaufort Sea. Although BP measured sound field propagation through barrier islands during its 2008 Liberty seismic operation, the company proposed to undertake recordings that will yield more data regarding propagation of airgun sounds in the presence of barrier islands and shallow water. That work is currently planned to occur during the Simpson Lagoon seismic operation.

Comment 10: Five private citizens requested NMFS deny BP's IHA application due to concerns about the potential for an oil spill.

Response: As described in detail in the **Federal Resister** notice for the proposed IHA (77 FR 28530; May 1, 2012), BP's proposed Simpson Lagoon project would only involve OBC seismic surveys using airguns and ocean bottom recorders. There will be no oil and gas related drilling or production.

Comment 11: Six private citizens request NMFS deny BP's IHA application because they think seismic impulse would kill marine mammals in the area.

Response: As described in detail in the **Federal Resister** notice for the proposed IHA (77 FR 28530; May 1, 2012), as well as in this document, NMFS does not believe that BP's Simpson Lagoon OBC seismic surveys would cause injury or mortality to marine mammals. The required monitoring and mitigation measures being implemented would further reduce the adverse effect on marine mammals to the lowest levels practicable. Therefore, NMFS expects that only a small number of marine mammals would be taken by Level B harassment in the forms of temporary behavioral modification and displacement from the survey area. No injury and/or mortality of marine mammals is expected, and none was authorized.

Comment 12: One private citizen requested NMFS deny BP's IHA application for fear that intensive sound could cause mortality to cephalopods and other invertebrates, which are important prey for marine mammals. Citing Andre *et al.* (2011). this person states that immediately following exposure to low frequency sound, the cephalopods showed hair cell damage within the statocysts. Overy time, nerve fibers became swollen and, eventually, large holes appeared.

Response: NMFS is aware of the paper by Andre *et al.* (2011), which was published in the journal *Frontier of Ecology and the Environment.* However, NMFS does not believe the results of the study represent what would happen in a natural environment. In their experiment, Andre *et al.* (2011) used 50–400 Hz sinusoidal wave sweeps with 100% duty cycle and 1-second sweep period for 2 hours in either a 2,000-liter fiberglass reinforced plastic tank or a 200-liter (glass-walled) tank occupied by one individual of one of the four cephalopod species. The sweep was produced and amplified through an in-air loudspeaker, while the level received was measured by a calibrated B&K 8106 hydrophone (received sound pressure level: 157 ± 5 dB re 1 µPa, with peak levels at 175 dB re 1 µPa). Therefore, the cephalopod in the small tank was exposed to a long-lasting intensive standing wave, instead of propagating waves from short airgun impulses in a free field. In addition, there was no mention of the total sound exposure level (SEL) over the 2-hour exposure period. For these reasons, NMFS did not consider this study in the analysis of acoustic impacts to marine mammal habitat, including prey species.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS-jurisdiction most likely to occur in the seismic survey area include three cetacean species, beluga (*Delphinapterus leucas*), bowhead whales (*Balaena mysticetus*), and gray whales (*Eschrichtius robustus*), and three pinniped species, ringed (*Phoca hispida*), spotted (*P. largha*), and bearded seals (*Erignathus barbatus*).

Four additional cetacean species and one pinniped species: Harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*) and minke whale (*Balaenoptera acutorostrata*), and Ribbon seals (*Histriophoca fasciata*) could also occur in the project area. Though their occurrence is considered extralimital.

The bowhead and humpback whales are listed as "endangered" under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. Additionally, the ribbon seal is considered a "species of concern", meaning that NMFS has some concerns regarding status and threats to this species, but for which insufficient information is available to indicate a need to list the species under the ESA. Bearded and ringed seals are "candidate species" under the ESA, meaning they are currently being considered for listing.

BP's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS' jurisdiction mentioned. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2011 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2011.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

Operating active acoustic sources such as airgun arrays, pinger systems, and vessel activities have the potential for adverse effects on marine mammals.

Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun pulses might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable. The Notice of Proposed IHA (77 FR 28530; May 1, 2012) included a discussion of the effects of airguns on

marine mammals, which is not repeated here. That discussion did not take into consideration the monitoring and mitigation measures proposed by BP and NMFS. No cases of temporary threshold shift (TTS) are expected as a result of BP's activities given the small size of the source, the strong likelihood that baleen whales (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS, and the mitigation measures required to be implemented during the survey described later in this document. Based on the fact that the sounds produced by BP's operations are unlikely to cause TTS in marine mammals, it is extremely unlikely that permanent hearing impairment would result. No injuries or mortalities are anticipated as a result of BP's operations, and none are authorized to occur. Only Level B harassment is anticipated as a result of BP's activities.

Potential Effects of Pinger Signals

A pinger system (Sonardyne Acoustical Pingers) and acoustic releases/transponders would be used for BP's 2012 open water OBC seismic survey in the Beaufort Sea. The specifications of this pinger system (source levels and frequency ranges) were provided in the Notice of Proposed IHA (77 FR 28530; May 1, 2012). The source levels of the pinger are much lower than those of the airguns, which are discussed above. It is unlikely that the pinger produces pulse levels strong enough to cause temporary hearing impairment or (especially) physical injuries even in an animal that is (briefly) in a position near the source.

Anticipated Effects on Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.* 1983; Ona 1988; Ona and Godo 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken 1992; Olsen 1979; Ona and Godo 1990; Ona and Toresen 1988). However, other researchers have found that fish such as polar cod, herring, and capelin are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.* 1995).

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Some feeding bowhead whales may occur in the Alaskan Beaufort Sea in July and August, and others feed intermittently during their westward migration in September and October (Richardson and Thomson [eds.] 2002; Lowry *et al.* 2004). However, by the time most bowhead whales reach the Chukchi Sea (October), they will likely no longer be feeding, or if it occurs it will be very limited. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused concentrations of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes. Thus, the activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses

Seismic surveys have the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds (as noted previously in this document) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals could divert from their normal migratory path by up several kilometers. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt.

In the case of subsistence hunts for bowhead whales in the Beaufort Sea, there could be an adverse impact on the hunt if the whales were deflected seaward (further from shore) in traditional hunting areas. The impact would be that whaling crews would have to travel greater distances to intercept westward migrating whales, thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads.

The proposed seismic survey would take place between July and September. The project area is located approximately 35 miles northeast from Nuiqsut, 35 miles west from Cross Island, 150 miles west from Kaktovik and 180 miles east from Barrow. Potential impact from the planned activities is expected mainly from sounds generated by the vessel and during active airgun deployment. Due to the timing of the project and the distance from the surrounding communities, it is anticipated to have no effects on spring harvesting and little or no effects on the occasional summer harvest of beluga whale, subsistence seal hunts (ringed and spotted seals are primarily harvested in winter while bearded seals are hunted during July–September in the Beaufort Sea), or the fall bowhead hunt. The community of Nuiqsut may begin fall whaling activities in late August to early September from Cross Island (east of the survey area), and their efforts are typically focused on whales approaching Cross Island so that any harvest would occur before whales approached the survey area. As part of the planned mitigation measures (see below), BP will not start airgun operations within the barrier islands before July 25, 2012, and plans to complete those portions of the survey area outside of the barrier islands prior to August 25, 2012. All seismic activities after this date would take

place inshore of the barrier islands, thus avoiding the subsistence bowhead hunt in the area.

Finally, BP has signed a Conflict Avoidance Agreement (CAA), and prepared a Plan of Cooperation (POC) under 50 CFR 216.104 to address potential impacts on subsistence hunting activities. The CAA identifies what measures have been or will be taken to minimize adverse impacts of the planned activities on subsistence harvesting. BP met with the AEWC and communities' Whaling Captains' Associations as part of the CAA development, and established avoidance guidelines and other mitigation measures to be followed where the activities may have an impact on subsistence.

Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the BP open-water seismic survey in the Beaufort Sea, NMFS is requiring BP to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the marine seismic survey activities.

The mitigation measures are divided into the following major groups: (1) Sound source measurements, (2) Establishing exclusion and disturbance zones, (3) Vessel and helicopter related mitigation measures, and (4) Mitigation measures for airgun operations. The primary purpose of these mitigation measures is to detect marine mammals within, or about to enter designated exclusion zones and to initiate immediate shutdown or power down of the airgun(s), therefore it's very unlikely potential injury or TTS to marine mammals would occur, and Level B behavioral of marine mammals would be reduced to the lowest level practicable.

(1) Sound Source Measurements

The acoustic monitoring program has two objectives: (1) To verify the modeled distances to the exclusion and disturbance zones from the 640 in^3 and 320 in^3 airgun arrays and to provide corrected distances to the PSOs; and (2) to measure vessel sounds (i.e., received levels referenced to 1 m from the sound source) of each representative vessel of the seismic fleet, to obtain information on the sounds produced by these vessels.

Verification and Establishment of Exclusion and Disturbance Zones

Acoustic measurements to calculate received sound levels as a function of distance from the airgun sound source will be conducted within 72 hours of initiation of the seismic survey. These measurements will be conducted according to a standard protocol for the 640-in^3 array, the 320-in^3 array and the 40-in^3 gun, both inside and outside the barrier islands.

The results of these acoustic measurements will be used to re-define, if needed, the distances to received levels of 190, 180, 160 and 120 dB. The distances of the received levels as a function of the different sound sources (varying discharge volumes) will be used to guide power-down and ramp-up procedures. A preliminary report describing the methodology and results of the verification for at least the 190 dB and 180 dB (rms) exclusion zones will be submitted to NMFS within 14 days of completion of the measurements.

Measurements of Vessel Sounds

BP intends to measure vessel sounds of each representative vessel. The exact scope of the source level measurements (back-calculated as received levels at 1 m from the source) will follow a pre-defined protocol to eliminate the complex interplay of factors that underlie such measurements, such as bathymetry, vessel activity, location, season, etc. Where possible and practical the monitoring protocol will be developed in alignment with other existing vessel source level measurements.

(2) Establishing Exclusion and Disturbance Zones

Under current NMFS guidelines, the "exclusion zone" for marine mammal exposure to impulse sources is customarily defined as the area within which received sound levels are ≥180 dB re 1 µPa (rms) for cetaceans and ≥190 dB re 1 µPa (rms) for pinnipeds. These safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that at higher levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the exclusion zones (Richardson *et al.* 1995).

An acoustic propagation model, i.e., JASCO's Marine Operations Noise Model (MONM), was used to estimate the distances to received sound levels of 190, 180, 170, 160, and 120 dB re 1µPa (rms) for pulsed sounds from the 640-in^3 and 320-in^3 airgun arrays. Modeling methodology and results are described in detail in the appendix of the BP's IHA application (Warner and Hipsey 2011). Table 2 summarizes the distances from the source to specific received sound levels based on MONM modeling.

TABLE 2—ESTIMATED DISTANCES TO SPECIFIED RECEIVED SPL (RMS) FROM AIRGUN ARRAYS WITH A TOTAL DISCHARGE VOLUME OF 640-IN^3, 320-IN^3, AND 40-IN^3

Received Levels (dB re 1 µPa rms)	Distance in meters (inside barrier islands)			Distance in meters (outside barrier islands)	
	640-in^3	320-in^3	40-in^3	640-in^3	40-in^3
190	310	160	16	120	<50
180	750	480	59	950	<50
170	1,200	930	300	2,500	120
160	1,800	1,500	700	5,500	810
120	6,400	5,700	3,700	44,000	16,000

Note: Values are based on 2 m-tow depth for the 640-in^3 and 40-in^3 array, and a 1 m-tow depth for the 320-in^3 array.

The distances to received sound levels of 160 dB re 1 µPa (rms) of the 640-in^3 airgun array were used to calculate the numbers of marine mammals potentially harassed by the activities. The distances to received

levels of 180 dB and 190 dB re 1 μPa (rms) are mainly relevant as exclusion radii to avoid level A harassment of marine mammals through implementation of shut down and power down measures (see details below).

(3) Vessel and Helicopter Related Mitigation Measures

This proposed mitigation measures apply to all vessels that are part of the Simpson Lagoon seismic survey, including crew transfer vessels.

- Vessel operators shall avoid concentrations or groups of whales and vessels shall not be operated in a way that separates members of a group. In proximity of feeding whales or aggregations, vessel speed shall be less than 10 knots.
- When within 900 feet (300 m) of whales vessel operators shall take every effort and precaution to avoid harassment of these animals by:
  Reducing speed to 5 knots or less when within 300 yards of whales and steering around (groups of) whales if circumstances allow, but never cutting off a whale's travel path;
  Avoiding multiple changes in direction and speed.
- Vessel operators shall check the waters immediately adjacent to a vessel to ensure that no marine mammals will be injured when the vessel's propellers (or screws) are engaged.
- To minimize collision risk with marine mammals, vessels shall not be operated at speeds that would make collisions with whales likely. When weather conditions require, such as when visibility drops, vessels shall reduce speed to 9 knots or below to avoid the likelihood of injury to whales.
- Sightings of dead marine mammals would be reported immediately to the BP representative. BP is responsible for ensuring reporting of the sightings according to the guidelines provided by NMFS.
- In the event that any aircraft (such as helicopters) are used to support the planned survey, the mitigation measures below would apply:
  Under no circumstances, other than an emergency, shall aircraft be operated at an altitude lower than 1,000 feet above sea level (ASL) when within 0.3 mile (0.5 km) of groups of whales.
  Helicopters shall not hover or circle above or within 0.3 mile (0.5 km) of groups of whales.

(4) Mitigation Measures for Airgun Operations

The primary role for airgun mitigation during seismic survey is to monitor marine mammals near the seismic source vessel during all daylight airgun operations and during any nighttime start-up of the airguns. During the seismic survey PSOs will monitor the pre-established exclusion zones for the presence of marine mammals. When marine mammals are observed within, or about to enter, designated safety zones, PSOs have the authority to call for immediate power down (or shutdown) of airgun operations as required by the situation. A summary of the procedures associated with each mitigation measure is provided below.

Ramp Up Procedure

Ramp up procedures for an airgun array involve a step-wise increase in the number of operating airguns until the required discharge volume is achieved. The purpose of a ramp up (sometimes also referred to as soft start) is to provide marine mammals in the vicinity of the activity the opportunity to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

The rate of ramp up shall be no more than 6 dB of source level per 5-min period.

A common procedure is to double the number of operating airguns at 5-min intervals, starting with the smallest gun in the array. BP states that it intends to double the number of airguns operating at 5 minute intervals during ramp up. For the 640-cu-in airgun array of the Simpson Lagoon seismic survey this is estimated to take 20 minutes, and for the 320-in^3 array 15 minutes. During ramp up, the safety zone for the full airgun array will be observed.

The ramp up procedures will be applied as follows:

- A ramp up, following a cold start, can be applied if the exclusion zone has been free of marine mammals for a consecutive 30-minute period. The entire exclusion zone must have been visible during these 30 minutes. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin.
- Ramp up procedures from a cold start will be delayed if a marine mammal is sighted within the exclusion zone during the 30-minute period prior to the ramp up. The delay will last until the marine mammal(s) has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 or 30 minutes. The 15 minutes applies to small toothed whales and pinnipeds, while a 30 minute observation period applies to baleen whales and large toothed whales.
- A ramp up, following a shutdown, can be applied if the marine mammal(s) for which the shutdown occurred has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 minutes (small toothed whales and pinnipeds) or 30 minutes (baleen whales and large toothed whales). This assumes there was a continuous observation effort prior to the shutdown and the entire exclusion zone is visible.
- If, for any reason, electrical power to the airgun array has been discontinued for a period of 10 minutes or more, ramp-up procedures need to be implemented. Only if the PSO watch has been suspended, a 30-minute clearance of the exclusion zone is required prior to commencing ramp-up. Discontinuation of airgun activity for less than 10 minutes does not require a ramp-up.
- The seismic operator and PSOs will maintain records of the times when ramp-ups start and when the airgun arrays reach full power.

Power-Down Procedures

A power down is the immediate reduction in the number of operating airguns such that the radii of the 190 dB and 180 dB (rms) zones are decreased to the extent that an observed marine mammal is not in the applicable safety zone of the full array. During a power down, one airgun (or some other number of airguns less than the full airgun array) continues firing. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of airgun activity, and (b) retain the option of initiating a ramp up to full operations under poor visibility conditions.

- The airgun array shall be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full array, but is outside the applicable exclusion zone of the single mitigation airgun.
- If a marine mammal is already within the exclusion zone when first detected, the airguns will be powered down immediately.
- Following a power-down, ramp up to the full airgun array will not resume until the marine mammal has cleared the exclusion zone. The animal will be considered to have cleared the exclusion zone if it is visually observed to have left the exclusion zone of the full array, or has not been seen within the zone for 15 minutes (pinnipeds or small toothed whales) or 30 minutes (baleen whales or large toothed whales).

Shutdown Procedures

- The operating airgun(s) will be shutdown completely if a marine mammal approaches or enters the 190 or 180 dB (rms) exclusion zone of the smallest airgun.
- Airgun activity will not resume until the marine mammal has cleared the exclusion zone of the full array. The animal will be considered to have cleared the exclusion zone as described above under ramp up procedures.

Poor Visibility Conditions

BP plans to conduct 24-hour operations. PSOs will not be on duty during ongoing seismic operations during darkness, given the very limited effectiveness of visual observation at night (there will be no periods of darkness in the survey area until mid-August). The proposed provisions associated with operations at night or in periods of poor visibility include the following:

- If during foggy conditions, heavy snow or rain, or darkness (which may be encountered starting in late August), the full 180 dB exclusion zone is not visible without using vessel lights, night vision devices, and/or forward looking infrared, the airguns cannot commence a ramp-up procedure from a full shut-down.
- If one or more airguns have been operational before nightfall or before the onset of poor visibility conditions, they can remain operational throughout the night or poor visibility conditions. In this case ramp-up procedures can be initiated, even though the exclusion zone may not be visible, on the assumption that marine mammals will be alerted by the sounds from the single airgun and have moved away.

In addition, airguns shall not be fired during long transits when exploration activities are not occurring, including the common firing of one airgun (also referred to as the "mitigation gun" in past IHAs). This does not apply to turns when starting a new track line. Keeping an airgun firing unnecessarily for long periods of time would only introduce more noise into the water.

Mitigation Measures for Subsistence Activities

(1) Subsistence Mitigation Measures

To limit potential impacts to the bowhead whale migration and the subsistence hunt, BP would not conduct airgun operations inside the barrier islands before July 25, and will not conduct airgun operations in the area north of the barrier islands after 25 August.

(2) Plan of Cooperation (POC) and Conflict Avoidance Agreement (CAA)

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

BP has signed a Conflict Avoidance Agreement (CAA) with the Alaska Eskimo Whaling Commission (AEWC) and communities' Whaling Captains' Associations for the proposed 2012 Simpson Lagoon OBV seismic survey. The main purpose of the CAA is to provide (1) equipment and procedures for communications between subsistence participants and industry participants; (2) avoidance guidelines and other mitigation measures to be followed by the industry participants working in or transiting in the vicinity of active subsistence hunters, in areas where subsistence hunters anticipate hunting, or in areas that are in sufficient proximity to areas expected to be used for subsistence hunting that the planned activities could potentially adversely affect the subsistence bowhead whale hunt through effects on bowhead whales; and (3) measures to be taken in the event of an emergency occurring during the term of the CAA.

In the CAA, BP agrees to employ a Marine Mammal Observer/Inupiat Communitor (MMO/IC) on board each primary sound source vessel owned or operated by BP in the Beaufort Sea, and that native residents of the eleven villages represented by the AEWC shall be given preference in hiring for MMO/IC positions.

The CAA states that all vessels (operated by BP) shall report to the appropriate Communication Center (Com-Center) at least once every six hours commencing with a call at approximately 06:00 hours. The appropriate Com-Center shall be notified if there is any significant change in plans, such as an unannounced start-up of operations or significant deviations from announced course, and such Com-Center shall notify all whalers of such changes.

The CAA further states that each Com-Center shall have an Inupiat operator ("Com-Center operator") on duty 24 hours per day from August 15, or one week before the start of the fall bowhead whale hunt in each respective village, until the end of the bowhead whale subsistence hunt.

The CAA also states that following the end of the fall 2012 bowhead whale subsistence hunt and prior to the 2013 pre-season introduction meetings, the industry participant that establishes the Deadhorse and Kaktovik Com Center will offer to the AEWC Chairman to host a joint meeting with all whaling captains of the villages of Nuiqsut, Kaktovik, and Barrow, the Marine Mammal Observer/Inupiat Communicators stationed on the industry participants' vessels in the Beaufort Sea, and with the Chairman and Exective Director of the AEWC, at a mutually agreed upon time and place on North Slope of Alaska, to review the results of the 2012 Beaufort Sea open water season.

In addition, BP has developed a "Plan of Cooperation" (POC) for the proposed 2012 seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea in consultation with representatives of Nuiqsut Community on the Beaufort Sea coast on issues related to subsistence seal hunting. Mitigation measures similar to those listed in the CAA have been identified in the POC, and a final POC has been delivered to NMFS.

Mitigation Conclusions

NMFS has carefully evaluated these mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS and proposed by the independent peer review panel, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting Measures

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing

regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring Measures

(1) Monitoring Measures

The following monitoring measures are required for BP's 2012 open-water seismic survey in the Beaufort Sea.

There will be two vessel-based monitoring programs during the Simpson Lagoon OBC seismic survey. One program involves the presence of protected species observers (PSOs) on the seismic source vessels during the entire seismic survey period. The other vessel-based program involves two PSOs on a monitoring vessel outside the barrier islands after 25 August.

Visual Monitoring From Source Vessels

Two PSOs will be present on each seismic source vessel. Of these two PSOs, one will be on watch at all times during daylight hours to monitor the 190 and 180 dB exclusion zones for the presence of marine mammals during airgun operations. During the fall bowhead whale migration season the 160 dB disturbance zone will also be monitored for the presence of groups of 12 or more baleen whales. The 120 dB disturbance zone for bowhead cow/calf pairs will be monitored from another vessel (see section "Visual Monitoring Outside the Barrier Islands"). The main objectives of the vessel-based marine mammal monitoring program from the source vessels are as follows:

- To implement mitigation measures during seismic operations (e.g. course alteration, airgun power-down, shut-down and ramp-up);
- To record all marine mammal data needed to estimate the number of marine mammals potentially affected, which must be reported to NMFS within 90 days after the survey;
- To compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and
- To obtain data on the behavior and movement patterns of marine mammals observed and compare those at times with and without seismic activity.

Marine Mammal Observer Protocol

BP intends to work with experienced PSOs that have had previous experience working on seismic survey vessels, which will be especially important for the lead PSO on the source vessels. At least one Alaska Native resident, who is knowledgeable about Arctic marine mammals and the subsistence hunt, is expected to be included as one of the team members aboard the vessels. Before the start of the seismic survey the crew of the seismic source vessels will be briefed on the function of the PSOs, their monitoring protocol, and mitigation measures to be implemented. They will also be aware of the monitoring objectives of the dedicated monitoring vessel, and how their observations can affect the operations.

On all source vessels, at least one observer will monitor for marine mammals at any time during daylight hours (there will be no periods of total darkness until mid-August). PSOs will be on duty in shifts of a maximum of 4 hours at a time, although the exact shift schedule will be established by the lead PSO in consultation with the other PSOs.

The three source vessels will offer suitable platforms for PSOs. Observations will be made from locations where PSOs have the best view around the vessel. During daytime, the PSO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7×50 Fujinon) and with the naked eye. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation, using other vessels in the area as targets. Laser range finding binoculars are generally not useful in measuring distances to animals directly.

Communication Procedures

When marine mammals in the water are detected within or about to enter the designated safety zones, the airgun(s) power-down or shut-down procedures will be implemented immediately. To assure prompt implementation of power-downs and shut-downs, multiple channels of communication between the PSOs and the airgun technicians will be established. During the power-down and shut-down, the PSO(s) will continue to maintain watch to determine when the animal(s) are outside the safety radius. Airgun operations can be resumed with a ramp-up procedure (depending on the extent of the power down) if the observers have visually confirmed that the animal(s) moved outside the exclusion zone, or if the animal(s) were not observed within the safety zone for 15 minutes (pinnipeds and small toothed whales) or for 30 minutes (for baleen whales and large toothed whales). Direct communication with the airgun operator will be maintained throughout these procedures.

Data Recording

All marine mammal observations and any airgun power-down, shut-down and ramp-up will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database after each day. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Visual Monitoring Outside the Barrier Islands

The main purpose of the PSOs on the monitoring vessel that will operate outside the barrier islands is to monitor the 120 dB disturbance zone during daylight hours for the presence of four or more bowhead cow/calf pairs. The predicted distances to received levels of 120 dB are 6.4 km for the 640 in^3 array and 5.7 km for the 320 in^3 array. The distance to the 160 dB disturbance zone is small enough (1.8 km for the 640 in^3 and 1.5 km for the 320 in^3 array) to be covered by the PSOs on the source vessels. Of the two PSOs on the monitoring vessel, one will be on watch at all times during daylight hours to monitor the disturbance zones and to communicate any sightings of four bowhead cow/calf pairs to the PSOs on the source vessels. The shift schedule and observer protocol will be similar to that of the PSOs on the source vessels.

Channels of communication between the lead PSOs on the source vessels and the dedicated monitoring vessel will also be established. If four or more bowhead cow/calf pairs are observed within or entering the 120 dB disturbance zone the lead PSO on monitoring vessel will immediately contact the lead PSO on the source vessel, who will ensure prompt implementation of airgun power downs or shutdowns. The lead PSO of the monitoring vessel will continue monitoring the 120 dB zone and notify the PSO on the source vessel when the cow/calf pairs have left the safety zone or when they haven't been observed within the safety zone for 30 minutes. Under these conditions ramp-up can be initiated.

These vessel based surveys outside the barrier islands will be conducted up to 3 days per week, weather depending.

Anticipated start date is August 25, 2012, and these surveys will be continuing until the end of the data acquisition period. During this period data acquisition will take place only inside the barrier islands. The vessel will follow transect lines within the 120 dB zone that are designed in such a way that the area ensonified by 120 dB or more will be covered. The exact start and end point will depend on the area to be covered by the source vessels during that particular day.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed "where the proposed activity may affect the availability of a species or stock for taking for subsistence uses" (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, "Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan" (50 CFR 216.108(d)).

NMFS convened an independent peer review panel to review BP's mitigation and monitoring plan in its IHA application for taking marine mammals incidental to the proposed OBC seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea, during 2012. The panel met on January 5 and 6, 2012, and provided their final report to NMFS on February 29, 2012. The full panel report can be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

The peer review panel report contains recommendations that the panel members felt were applicable to BP's monitoring plans. Specifically the panel commented on issues related to: (1) Vessel-based marine mammal observers (MMOs), (2) MMO training, (3) Data recording, (4) Data analysis, and (5) Acoustical monitoring.

NMFS has reviewed the report and evaluated all recommendations made by the panel. NMFS has determined that there are several measures that BP can incorporate into its 2012 OBC seismic survey. Additionally, there are other recommendations that NMFS has determined would also result in better data collection, and could potentially be implemented by oil and gas industry applicants, but which likely could not be implemented for the 2012 open water season due to technical issues (see below). While it may not be possible to implement those changes this year, NMFS believes that they are worthwhile and appropriate suggestions that may require a bit more time to implement, and BP should consider incorporating them into future monitoring plans should BP decide to apply for IHAs in the future.

The following subsections lay out measures that NMFS is requiring BP to implement as part of its 2012 OBC seismic survey and measures for future implementation.

To Be Implemented for Inclusion in the 2012 Monitoring Plan

(1) Vessel-Based Marine Mammal Observers

- Utilize crew members to assist the MMOs. Crew members should not be used as primary MMOs because they have other duties and generally do not have the same level of expertise, experience, or training as MMOs, but they could be stationed on the fantail of the vessel to observe the near field, especially the area around the airgun array and implement a rampdown or shutdown if a marine mammal enters the safety zone (or exclusion zone).
- If crew members are to be used as MMOs, they should go through some basic training consistent with the functions they will be asked to perform. The best approach would be for crew members and MMOs to go through the same training together.
- As BP plans to have a marine mammal survey vessel outside the barrier islands after 25 August, the panel recommends BP use MMOs on the vessel to monitor for the presence and behavior of marine mammals in the offshore area projected to be exposed to seismic sounds.

(2) MMO Training

- BP could improve its MMO training by implementing panel recommendations from previous years (on other seismic survey programs). These recommendations include:

Observers should be trained using visual aids (e.g., videos, photos), to help them identify the species that they are likely to encounter in the conditions under which the animals will likely be seen.

Observer teams should include Alaska Natives, and all observers should be trained together. Whenever possible, new observers should be paired with experienced observers to avoid situations where lack of experience impairs the quality of observations.

Observers should understand the importance of classifying marine mammals as "unknown" or "unidentified" if they cannot identify the animals to species with confidence. In those cases, they should note any information that might aid in the identification of the marine mammal sighted. For example, for an unidentified mysticete whale, the observers should record whether the animal had a dorsal fin.

Observers should use the best possible positions for observing (e.g., outside and as high on the vessel as possible), taking into account weather and other working conditions.

- BP should train its MMOs to follow a scanning schedule that consistently distributes scanning effort according to the purpose and need for observations. For example, the schedule might call for 60 percent of scanning effort to be directed toward the near field and 40 percent at the far field. All MMOs should follow the same schedule to ensure consistency in their scanning efforts.
- MMOs also need training in documenting the behaviors of marine mammals. MMOs should simply record the primary behavioral state (i.e., traveling, socializing, feeding, resting, approaching or moving away from vessels) and relative location of the observed marine mammals.

(3) Data Recording

- MMOs should record observations of marine mammals hauled out on barrier islands. Because of the location of BP's proposed survey, most (if not all) of the marine mammals observed in the lagoon will be pinnipeds. It is feasible that the surveys may alter the hauling out patterns of pinnipeds, so observations of them should be recorded.
- BP should work with its observers to develop a means for recording data that does not reduce observation time significantly. Possible options include the use of a voice recorder during observations followed by later transcriptions, or well- designed software programs that minimize the time required to enter data. Other techniques also may be suitable.

(4) Data Analysis and Presentation of Data in Reports

- Estimation of potential takes or exposures should be improved for times with low visibility (such as during fog or darkness) through interpolation or possibly using a probability approach. For instance, for periods of fog or darkness one could use marine mammal observations obtained during a specified period of time before or after the time when visibility was restricted. Those data could be used to interpolate possible takes during periods of restricted visibility.

• Simpson Lagoon is relatively shallow, and marine mammal distribution likely will be closely linked to water depth. To account for this confounding factor, depth should be continuously recorded by the vessel and for each marine mammal sighting. Water depth should be accounted for in the analysis of take estimates.

• BP should be very clear in their report about what periods are considered "non-seismic" for analyses.

• BP should examine data from BWASP and other such programs to assess possible impacts from their seismic survey.

• The panel states that it believes the best ways to present data and results are described in peer-review reports from previous years. These recommendations include:

To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single mitigation airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot:

▪ Data for periods when a seismic array is active and when it is not; and

▪ The respective predicted received sound conditions over fairly large areas (tens of km) around operations.

To help evaluate the effectiveness of MMOs and more effectively estimate take, reports should include sightability curves (detection functions) for distance-based analyses.

To better understand the potential effects of oil and gas activities on marine mammals and to facilitate integration among companies and other researchers the following data should be obtained and provided electronically in the 90- day report:

▪ The location and time of each aerial or vessel-based sighting or acoustic detection;

▪ Position of the sighting or acoustic detection relative to ongoing operations (i.e., distance from sightings to seismic operation, drilling ship, support ship, etc.), if known;

▪ The nature of activities at the time (e.g., seismic on/off);

▪ Any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the MMO's ability to detect marine mammals); and

▪ Adjustments made to operating procedures.

• BP should improve take estimates and statistical inference into effects of the activities by incorporating the following measures:

▪ Reported results from all hypothesis tests should include estimates of the associated statistical power.

▪ Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available.

(5) Acoustical Monitoring

• BP should also use the offshore vessel to monitor (periodically) the propagation of airgun sounds from within the lagoon into offshore areas during its marine mammal survey using a dipping hydrophone.

• To help verify the propagation model results, the panel also recommends additional acoustic monitoring with bottom mounted recorders. Recorders should be deployed throughout the seismic survey. One suggestion is to deploy instruments including: One at the cut, or break, between Leavitt and Spy islands at about the 5 m isobath; one north of the center of Leavitt Island at the 10 m isobath; and one off the east end of Pingok Island at the 10 m isobath.

Recommendations To Be Considered for Future Monitoring Plans

In addition, the panelists recommended that (1) BP continue to develop and test observational aids to assist with visibility during night, poor light conditions, inclement weather, etc.; and (2) BP conduct additional acoustic monitoring with bottom mounted recorders to monitor for calling marine mammals. It may be possible to evaluate calling rates relative to seismic operations or received levels of seismic sounds. Additionally, Shell will have several acoustic arrays in the general area. Those arrays will provide a basis for determining locations of calling marine mammals. NMFS should encourage BP to request data from Shell to help examine impacts of the seismic survey on the distribution of calling bowheads and other marine mammals.

After discussion with BP, NMFS decided not to implement these two recommendations for BP's 2012 OBC seismic survey because most of BP's survey would occur during the time when there will be very short low-light hours. As for the second recommendation, NMFS realized that given the complexity in marine mammal passive acoustic localization, BP will not have the time to implement this recommendation for its 2012 survey.

(2) Reporting Measures

Sound Source Verification Reports

A report on the preliminary results of the sound source verification measurements, including the measured 190, 180, 160, and 120 dB (rms) radii of the airgun sources, shall be submitted within 14 days after collection of those measurements at the start of the field season. This report will specify the distances of the exclusion zones that were adopted for the survey.

Technical Reports

The results of BP's 2012 vessel-based monitoring, including estimates of "take" by harassment, shall be presented in the "90-day" and Final Technical reports. The Technical Reports should be submitted to NMFS within 90 days after the end of the seismic survey. The Technical Reports will include:

(a) Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(b) Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

(c) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(d) To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single mitigation airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot:

• Data for periods when a seismic array is active and when it is not; and

• The respective predicted received sound conditions over fairly large areas (tens of km) around operations;

(e) Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability), such as:

• Initial sighting distances versus airgun activity state;

• Closest point of approach versus airgun activity state;

• Observed behaviors and types of movements versus airgun activity state;

• Numbers of sightings/individuals seen versus airgun activity state;

• Distribution around the survey vessel versus airgun activity state; and

• Estimates of take by harassment;

(f) Reported results from all hypothesis tests should include

estimates of the associated statistical power when practicable;

(g) Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available;

(h) The report should clearly compare authorized takes to the level of actual estimated takes; and

Notification of Injured or Dead Marine Mammals

In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), BP shall immediately cease survey operations and immediately report the incident to NMFS and the Alaska Regional Stranding coordinators. The report must include the following information: (1) Time, date, and location (latitude/longitude) of the incident; (2) the name and type of vessel involved; (3) the vessel's speed during and leading up to the incident; (4) description of the incident; (5) status of all sound source use in the 24 hours preceding the incident; (6) water depth; (7) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility); (8) description of marine mammal observations in the 24 hours preceding the incident; (9) species identification or description of the animal(s) involved; (10) the fate of the animal(s); and (11) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with BP to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. BP may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that BP discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), BP shall immediately report the incident to NMFS and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with BP to determine whether modifications in the activities are appropriate.

In the event that BP discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), BP shall report the incident to NMFS and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. BP shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. BP can continue its operations under such a case.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed open-water marine survey program. Anticipated impacts to marine mammals are associated with noise propagation from the survey airgun(s) used in the OBC seismic survey.

The full suite of potential impacts to marine mammals was described in detail in the "Potential Effects of the Specified Activity on Marine Mammals" section found in the Notice of Proposed IHA (77 FR 28530; May 1, 2012). The potential effects of sound from the open-water seismic survey might include one or more of the following: Tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) is highly unlikely to occur based on the required mitigation and monitoring measures that would preclude marine mammals being exposed to noise levels high enough to cause hearing impairment.

For impulse sounds, such as those produced by airgun(s) used in the shallow hazards survey, NMFS uses the 160 dB_{rms} re 1 µPa isopleth to indicate the onset of Level

B harassment. BP provided calculations for the 160- and 120-dB isopleths produced by these activities and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make the necessary MMPA findings. BP provided a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which was also provided in the Notice of Proposed IHA (77 FR 28530; May 1, 2012). A summary of that information is provided here, as it has not changed from the proposed notice.

BP has requested an authorization to take 11 marine mammal species by Level B harassment. These 11 marine mammal species are: beluga whale (*Delphinapterus leucas*), killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), bearded seal (*Erignathus barbatus*), ringed seal (*Phoca hispida*), spotted seal (*P. largha*), and ribbon seal (*Histriophoca fasciata*). However, due to the extralimital distribution of humpback whales, NMFS considers that the occurrence of this species in the vicinity of BP's seismic survey area is unlikely.

Basis for Estimating "Take by Harassment"

As stated previously, it is current NMFS policy to estimate take by Level B harassment for impulse sounds at a received level of 160 dB_{rms} re 1µPa. However, not all animals react to sounds at this low level, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* (2007)). Tables 7, 9, and 11 in Southall *et al.* (2007) outline the numbers of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water, respectively, reported as

having behavioral responses to multi-pulses in 10-dB received level increments. These tables illustrate that for the studies summarized the more severe reactions did not occur until sounds were much higher than 160 dB_{rms} re 1μPa.

As described earlier in the document, two main source vessels and a mini source vessel would be used to conduct the OBC seismic surveys in the Simpson Lagoon. Each of the main source vessels would be equipped with two subarrays containing eight 40 in^3 airguns, with a total volume displacement of 640 in^3. The mini source vessel would be equipped with one subarray containing eight 40 in^3 airguns, with a total displacement volume of 320 in^3. Modeling results show that the 160 dB isopleths for the 640 in^3, 320 in^3, and 40 in^3 airgun arrays inside the barrier islands are approximately 1,800 m, 1,500 m, and 700 m from the source, respectively; the 160 dB isopleths for the 640 in^3 and 40 in^3 airgun arrays outside the barrier islands are approximately 5,500 m and 810 m fromthe source, respectively (Please see above for detailed description of the exclusion and disturbance zones).

The radii associated with received sound levels of 160 dB re 1 μPa (rms) or higher are used to calculate the number of potential marine mammal "exposures" to airgun sounds. The potential number of each species that might be exposed to received pulsed sound levels of ≥160 dB re 1 μPa (rms) is calculated by multiplying the expected species density with the anticipated area to be ensonified to that level during airgun operations. Bowhead and beluga whales are migrating through the area, so every encounter likely involves a new individual. Although seal species are also known to cover large distances, they are expected to linger longer within a certain area, and so one individual might be exposed multiple times.

The area expected to be ensonified was determined by entering the seismic survey lines into a MapInfo Geographic Information System (GIS). GIS was then used to identify the relevant areas by "drawing" the applicable 160-dB buffer of the 640-in^3 array around each seismic source line and calculating the total area within the buffers. This was done for the survey area outside the barrier islands and inside the barrier islands separately. The area ensonified with pulsed sound levels of ≥160 dB re 1 μPa (rms) from airgun operations outside the barrier islands is estimated as 197.5 mi^2 (512 km^2) and from airgun operations inside the barrier islands 105 mi^2 (272 km^2).

Summer density (see below) estimates of marine mammals will be applied to all (100%) survey effort outside the barrier islands and to 60% survey effort inside the barrier islands. Fall densities are not applied to the outside barrier islands survey effort, since no survey effort is planned after August 25. Fall densities are applied to 100% survey effort inside the barrier islands activity, because some of the source lines will be rerun in order to image the full fold area adequately.

Marine Mammal Density Estimates

Because most cetacean species show a distinct seasonal distribution, density estimates for the central Beaufort Sea have been derived for the summer period (covering July and August) and the fall period (covering September and October). Animal densities encountered in the Beaufort Sea during both of these time periods will further depend on the presence of ice. However, if ice cover within or close to the seismic survey area is more than approximately 10%, seismic survey activities may not start or be halted. Cetacean and pinniped densities related to ice conditions are therefore not included in BP's IHA application. Pinniped species in the Beaufort Sea do not show a distinct seasonal distribution during the period July-early-October and as such density estimates derived for seal species are used for both the summer and fall periods.

In addition to seasonal variation in densities, spatial differentiation is an important factor for marine mammal densities, both in latitudinal and longitudinal gradient. Taking into account the size and location of the proposed seismic survey area and the associated area of influence, only the nearshore zone (defined as the area between the shoreline and the 50 m [164 ft] bathymetry line) of the Beaufort Sea was considered to be relevant for the calculation of densities.

Density estimates are based on best available scientific data. In cases where the best available data were collected in regions, habitats, or seasons that differ from the proposed survey activities, information from monitoring results collected in similar habitats, regions or seasons was used. Some sources from which densities were used include correction factors to account for perception and availability bias in the reported densities. Perception bias is associated with diminishing probability of sighting with increasing lateral distance from the trackline, where an animal is present at the surface but could be missed. Availability bias refers to the fact that the animal might be present but is not available at the surface. The uncorrected number of marine mammals observed is therefore always lower than the actual numbers present. Unfortunately, for most marine mammals not enough information is available to calculate these two correction factors. The density estimates provided in the BP's IHA request are therefore based on uncorrected data, unless mentioned otherwise.

Because the available density data is not always representative for the area of interest, and correction factors were not always known, there is some uncertainty in the data and assumptions used in the density calculations. To provide allowance for these uncertainties, maximum density estimates have been provided in addition to average density estimates. The marine mammal densities presented are believed to be close to, and in most cases higher than, the densities that are expected to be encountered during the proposed survey.

Detailed density information of marine mammal species present in the vicinity of BP's OBC seismic area is described in detail in the **Federal Register** notice for the proposed IHA (77 FR 28530; May 1, 2012). Table 3 is the summary of the marine mammal density used to calculate estimated takes.

TABLE 3—EXPECTED DENSITIES OF MARINE MAMMALS IN THE SIMPSON LAGOON SURVEY AREA

Species	Summer densities (#/km^2)	Autumn densities (#/km^2)
Bowhead whale	0.0065	0.1226
Beluga whale	0.0008	0.0136
Ringed seal	0.1680	0.1680
Bearded seal	0.0124	0.0124
Spotted seal	0.0020	0.0020

Potential Number of Takes by Harassment

Numbers of marine mammals that might be present and potentially taken are summarized in Table 4 based on available data about mammal distribution and densities at different locations and times of the year as described above.

Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to ≥160 dB re 1 μPa (rms). Thus, these calculations actually estimate the number of individuals potentially exposed to ≥160 dB (rms) that would

occur if there were no avoidance of the area ensonified to that level.

For beluga whales and spotted seals that may form groups, additional takes were requested on top of the density-based take calculation in the event a large group is encountered during the survey. For marine mammal species that are extralimital and for which no density estimates are available in the vicinity of the proposed project area (such as gray, minke, and killer whales, harbor porpoise, and ribbon seal), a small number of takes have been requested in case they are encountered (Table 4).

TABLE 4—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS TAKEN BY LEVEL B HARASSMENT (EXPOSED TO ≥160 DB RE 1 μPA (RMS)) DURING BP'S PROPOSED SEISMIC PROGRAM IN THE BEAUFORT SEAS, JULY–OCTOBER 2012

Species	Outside barrier islands	Inside barrier islands		Total estimated takes
	Summer	Summer	Autumn	
Bowhead whale	3	1	33	37
Beluga whale	0	0	4	50*
Gray whale	.....	.....	.....	3
Minke whale	.....	.....	.....	2
Killer whale	.....	.....	.....	3
Harbor porpoise	.....	.....	.....	3
Ringed seal	60	19	32	111
Bearded seal	9	3	5	17
Spotted seal	1	0	1	20*
Ribbon seal	.....	.....	.....	3

* Additional takes were requested in the event that a large group of beluga whales and spotted seals is encountered.

Estimated Take Conclusions

Cetaceans—Effects on cetaceans are generally expected to be restricted to avoidance of an area around the seismic survey and short-term changes in behavior, falling within the MMPA definition of "Level B harassment".

Using the 160 dB criterion, the average estimates of the numbers of individual cetaceans exposed to sounds ≥ 160 dB (rms) re 1 μPa represent varying proportions of the populations of each species in the Beaufort Sea and adjacent waters. For species listed as "Endangered" under the ESA, the estimates include approximately 37 bowheads. This number is approximately 0.24% of the Bering-Chukchi-Beaufort population of over 15,232 assuming 3.4% annual population growth from the estimate of over 10,545 animals in 2001 (Zeh and Punt 2005). For other cetaceans that might occur in the vicinity of the Simpson Lagoon survey area, they also represent a very small proportion of their respective populations. The average estimates of the number of belugas (with additional takes to account for a chance encounter of a large group) that might be exposed to 160 dB re 1 μPa is 50, which represents 0.13% of the Beaufort Sea population (or 1.35% of the Eastern Chukchi Sea population, or a mix between these two populations) of the beluga whales. In addition, the average estimates of gray, minke, and killer whales, and harbor porpoise that might be exposed to ≥160 dB re 1 μPa are 3, 2, 3, and 3. These numbers represent 0.02%, 0.20%, 0.96%, and 0.0062% of these species of their respective populations in the proposed action area.

Although humpback whales are not likely to be encountered in BP's proposed seismic survey area, NMFS has analyzed the possibility of an occasional exposure of up to 2 humpback whales to received noise levels by Level B behavioral harassment. This would represent 0.21% of the Western North Pacific stock of approximately 938 humpback whales in the proposed action area. Based on the analysis, NMFS has determined that such level of take will have negligible impacts to the humpback whales. Since analysis conducted by NMFS' Alaska Regional Office (AKRO) on section 7 consultation on ESA-listed species showed that humpback whales would not be affected, no humpback whale take is authorized by AKRO, therefore, the final IHA does not include takes of humpback whale as well.

Seals—A few seal species are likely to be encountered in the study area, but ringed seal is by far the most abundant in this area. The average estimates of the numbers of individuals exposed to sounds at received levels ≥160 dB (rms) re 1 μPa during the proposed shallow hazards survey are as follows: ringed seals (111), bearded seals (17), spotted seals (20, with additional takes to count for chance encounter of a group), and ribbon seals (2). These numbers represent 0.05%, 0.01%, 0.03%, and 0.0033% of Alaska stocks of ringed, bearded, spotted, and ribbon seals, respectively.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of BP's 2012 OBC seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea, and none are authorized. In addition, these surveys will use relatively small 640 in^3 airgun arrays, which have much less acoustic power outputs compared to conventional airgun arrays with displacement volume in the range of thousands cubic inches. Additionally, the survey areas are in shallow waters, with approximately 42% of the survey area located inside the barrier islands (depth: 0–9 ft, or 0–3 m) and 33% located outside the barrier islands (depth: 3–45 ft, or 1–15 m), where horizontal sound propagation of low frequency airgun pulses is severely limited. For the seismic survey inside the barrier islands, the islands provide a natural barrier that would effectively reduce sound propagation out to the open ocean, if not completely

eliminate its propagation. The modeled isopleths at 160 dB within the barrier islands is expected to be approximately 1.8 km, and 5.5 km outside barrier islands, from an airgun array of 640 in^3 (see discussion earlier). Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. Takes will be limited to Level B behavioral harassment. Although it is possible that some individuals of marine mammals may be exposed to sounds from the proposed seismic survey activities more than once, the expanse of these multi-exposures are expected to be less extensive since both the animals and the survey vessels will be moving constantly in and out of the survey areas.

Most of the bowhead whales encountered during the summer will likely show overt disturbance (avoidance) only if they receive airgun sounds with levels ≥ 160 dB re 1 µPa. Odontocete reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 6–12 mi (10–20 km) of seismic vessels during aerial surveys (Miller *et al.* 2005). Belugas will likely occur in small numbers in the Beaufort Sea during the survey period and few will likely be affected by the survey activity. In addition, due to the constant moving of the survey vessel, the duration of the noise exposure by cetaceans to seismic impulse would be brief. For the same reason, it is unlikely that any individual animal would be exposed to high received levels multiple times.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment". The many reported cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shut downs or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the eleven marine mammal species with possible occurrence in the proposed marine survey area, only the bowhead and humpback whales are listed as endangered under the ESA. These species are also designated as "depleted" under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate of 3.4 percent annually for nearly a decade (Allen and Angliss 2010). Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss 2010). The occurrence of humpback whales in the proposed marine survey areas is considered extralimital, and therefore no takes are included in the IHA. There is no critical habitat designated in the U.S. Arctic for the bowhead and humpback whale. The Alaska stock of bearded seals, part of the Beringia distinct population segment (DPS), and the Arctic stock of ringed seals, have been proposed by NMFS for listing as threatened under the ESA (bearded seals: 75 FR 77496; December 10, 2011; ringed seal: 75 FR 77476; December 10, 2011). None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

The authorized takes represent 0.13% of the Beaufort Sea population of approximately 39,258 beluga whales (or 1.35% of the Eastern Chukchi Sea population of approximately 3,710 beluga whales, or a mix of each population; Allen and Angliss 2010), 1.59% of Aleutian Island and Bering Sea stock of approximately 314 killer whales, 0.004% of Bering Sea stock of approximately 48,215 harbor porpoises, 0.02% of the Eastern North Pacific stock of approximately 19,126 gray whales, 0.24% of the Bering-Chukchi-Beaufort population of 15,232 bowhead whales assuming 3.4 percent annual population growth from the estimate of 10,545 animals (Zeh and Punt, 2005), and 0.20% of the Alaska stock of approximately 1,003 minke whales. The take estimates presented for bearded, ringed, spotted, and ribbon seals represent 0.01, 0.05, 0.03, and 0.0033% of U.S. Arctic stocks of each species, respectively. These take numbers represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. In addition, the mitigation and monitoring measures (described previously in this document) that are included in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that BP's proposed 2012 OBC seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine surveys will have a negligible impact on the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

NMFS has determined that BP's proposed 2012 OBC seismic survey in the Beaufort Sea will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This determination is supported by information contained in this document and BP's CAA and draft POC. BP has adopted a spatial and temporal strategy for its Simpson Lagoon operations that should minimize impacts to subsistence hunters. Specifically, BP's Simpson Lagoon OBC seismic survey would occur during the July to October open water season, would not start its airgun operations within the barrier islands before July 25, and will terminate its operations outside the barrier islands after August 25 before the fall bowhead whale hunt. Due to the timing of the project and the distance from the surrounding communities (approximately 35 miles northeast from Nuiqsut, 35 miles west from Cross Island, 150 miles west from Kaktovik and 180 miles east from Barrow), it is anticipated to have no effects on spring harvesting and little or no effects on the occasional summer harvest of beluga

whale, subsistence seal hunts (ringed and spotted seals are primarily harvested in winter while bearded seals are hunted during July–September in the Beaufort Sea), or the fall bowhead hunt.

In addition, based on the measures described in BP's POC and CAA, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from BP's OBC seismic survey in the Simpson Lagoon of the Beaufort Sea.

Endangered Species Act (ESA)

There are two marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the project area: The bowhead and humpback whales. In addition, there are two marine mammal species that are currently being proposed for listing under the ESA with confirmed occurrence in the proposed project area: Ringed and bearded seals. NMFS' Permits and Conservation Division consulted with NMFS' Alaska Regional Office Division of Protected Resources under section 7 of the ESA on the issuance of an IHA to BP under section 101(a)(5)(D) of the MMPA for this activity. A Biological Opinion was issued on June 21, 2012, which concludes that issuance of the IHA is not likely to jeopardize the continued existence of the ESA-listed marine mammal species and species proposed for ESA-listing. In addition, analysis by NMFS AKRO showed that humpback whale will not be affected, therefore, no take was authorized. NMFS will issue an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of listed species.

National Environmental Policy Act (NEPA)

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to BP to take marine mammals incidental to conducting its OBC seismic survey in the Simpson Lagoon area of the Beaufort Sea during the 2012 open water season. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an EIS is not necessary.

Authorization

As a result of these determinations, NMFS has issued an IHA to BP to take marine mammals incidental to its 2012 OBC open-water seismic survey in the Simpson Lagoon area of the Beaufort Sea, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 29, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–16584 Filed 7–5–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

The following notice of a scheduled meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission has scheduled a meeting for the following date: July 10, 2012 at 9:30 a.m.

PLACE: Three Lafayette Center, 1155 21st St. NW., Washington, DC, Lobby Level Hearing Room (Room 1300).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled this meeting to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. The agenda for this meeting is available to the public and posted on the Commission's Web site at *http://www.cftc.gov.* In the event that the time or date of the meeting changes, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–16706 Filed 7–3–12; 4:15 pm]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The National Civilian Community Corps Advisory Board gives notice of the following meeting:

DATE AND TIME: Thursday, July 19, 2012, 2:00 p.m.–3:30 p.m.

PLACE: Conference Room #8312, 8th floor, Corporation for National and Community Service Headquarters, 1201 New York Avenue NW., Washington, DC 20525.

CALL-IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–455–7057 conference call access code number 1876264. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and CNCS will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 203–369–3269. The end replay date: August 19, 2012, 11:59 p.m. (CT).

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Meeting Convenes
II. Approval of Minutes
III. Director's Report
IV. Area Reports:
- Recruitment, Selection and Placement
- Projects and Partnerships
- Policy and Operations
- Member Training and Development

V. Public Comment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify CNCS's contact person by 5:00 p.m. Thursday, July 12, 2012.

CONTACT PERSON FOR MORE INFORMATION: Erma Hodge, NCCC, Corporation for National and Community Service, 9th Floor, Room 9802B, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–6696. Fax (202) 606–3459. TTY: (800) 833–3722. Email: *ehodge@cns.gov.*

Dated: July 3, 2012.

Valerie E. Green,

General Counsel.

[FR Doc. 2012–16693 Filed 7–3–12; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–13]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a

section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–13 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 2, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUN 26 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-13, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Qatar for defense articles and services estimated to cost $2.5 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 12–13

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Qatar
(ii) *Total Estimated Value:*

Major Defense Equipment *	$1.5 billion
Other	$1.0 billion
Total	$2.5 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 10 MH–60R SEAHAWK Multi-Mission Helicopters, 12 MH–60S SEAHAWK Multi-Mission Helicopters with the Armed Helicopter Modification Kit, 48 T–700 GE 401C Engines (44 installed and 4 spare) with an option to purchase an additional 6 MH–60S SEAHAWK Multi-Mission Helicopters with the Armed Helicopter Modification Kit and 13 T–700 GE 401C Engines (12 installed and 1 spare) at a later date, communication equipment, spare engine containers, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.
(iv) *Military Department:* Navy (SAG)
(v) *Prior Related Cases, if any:* None
(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None
(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached
(viii) *Date Report Delivered to Congress:* 26 June 2012

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Qatar—MH–60R and MH–60S Multi-Mission Helicopters

The Government of Qatar has requested a possible sale of 10 MH–60R SEAHAWK Multi-Mission Helicopters, 12 MH–60S SEAHAWK Multi-Mission Helicopters with the Armed Helicopter Modification Kit, 48 T–700 GE 401C Engines (44 installed and 4 spare) with an option to purchase an additional 6 MH–60S SEAHAWK Multi-Mission Helicopters with the Armed Helicopter Modification Kit and 13 T–700 GE 401C Engines (12 installed and 1 spare) at a later date, communication equipment, spare engine containers, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $2.5 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political and economic progress in the Middle East. Qatar is a strategic partner in maintaining stability in the region. The acquisition of these helicopters will allow for greater interoperability with U.S. forces, providing benefits for training and possible future coalition operations in support of shared regional security objectives.

The proposed sale of the MH–60R and MH–60S SEAHAWK helicopters will improve Qatar's capability to meet current and future anti-surface warfare threats. Qatar will use the enhanced capability to strengthen its homeland defense. The MH–60R and MH–60S helicopters will supplement and eventually replace the Qatar Air Force's aging maritime patrol helicopters. Qatar will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Sikorsky Aircraft Corporation in Stratford, Connecticut, Lockheed Martin in Owego, New York, and General Electric in Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of fifteen contractor representatives to Qatar on an intermittent basis over the life of the case to support delivery of the MH–60R and MH–60S helicopters and provide support and equipment familiarization.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–13

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MH–60R SEAHAWK Multi-Mission Helicopter contains new generation technology. It is equipped for a range of missions including Anti-Surface Warfare (ASuW), Search and Rescue, Naval Gun Fire Support, Surveillance, Communications Relay, Logistics Support, Personnel Transfer, and Vertical Replenishment. The fully integrated glass cockpit is equipped with four 8 inch by 10 inch full color multi-function mission and flight displays that are night vision goggle compatible and sun light readable. The pilots and aircrew have common programmable keysets, mass memory unit, mission and flight management computers, and MH–60R dedicated operational software. The navigation suite includes the LN–100G inertial navigation system with an embedded global positioning system. The helicopter is equipped with mission systems including the APS–153 Multi-Mode Radar, the AN/ALQ–210 Electronic Support Measures System, and the AN/AAS–44 Multi-Spectral Targeting Forward Looking Infrared system. Self Protection systems include the AN/AAR–47 Missile Warning Set, AN/ALQ–144A Infrared Counter Measure System, and the AN/ALE–47chaff and flare decoy dispenser.

2. The MH–60S SEAHAWK Multi-Mission Helicopter contains new generation technology. It is equipped for a range of missions including Search and Rescue, combat Search and Rescue, vertical replenishment, non-combatant evacuation operations, medical evacuation, air ambulance, special warfare support, ASuW, and maritime interdiction operations. The fully integrated glass cockpit is equipped with four 8 inch by 10 inch full color multi-function mission and flight displays that are night vision goggle compatible and sunlight readable. The pilots and aircrew have common programmable keysets, a mass memory unit, mission and flight management computers, and MH–60R/MH–60S operational software. The navigation suite includes the LN–100G inertial navigation system embedded global positioning system and inertial navigation system. The helicopter is equipped with a fully digital communications suite with ARC–210 radios for Ultra High Frequency/Very High Frequency voice communications and the Downed Aviator Locating System. The MH–60S Armed Helicopter Weapons Kit includes the AN/AAS–44 Forward Looking Infrared, external weapons systems (pylons to carry up to eight HELLFIRE air-to-surface missiles), left and right cabin window-mounted crew-served weapons (7.62 mm and .50-calibre (12.7 mm)), Electronic Warfare Self-Defense Suite (including Missile/Laser Warning Systems

countermeasures, countermeasure dispensing systems), digital map, Identification Friend or Foe Mode-4 and cockpit/cabin floor armor. The MH–60S, including the mission equipment, is classified Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–16554 Filed 7–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–17 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 2, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUN 26 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-17, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $49 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001-06-C

Transmittal No. 12-17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kuwait
(ii) *Total Estimated Value:*

Major Defense Equipment *	$39 million
Other	$10 million
Total	$49 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 300 AGM-114R3 HELLFIRE II missiles, containers, spare and repair parts, support and test equipment, repair and return support, training equipment and personnel training, U.S. Government and contractor logistics, Quality Assurance Team support services, engineering and technical support, and other related elements of program support.
(iv) *Military Department:* Army (UMA)
(v) *Prior Related Cases, if any:* None
(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None
(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex
(viii) *Date Report Delivered to Congress:* 26 June 2012

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—AGM-114R3 HELLFIRE Missiles

The Government of Kuwait has requested a possible sale 300 AGM-

114R3 HELLFIRE II missiles, containers, spare and repair parts, support and test equipment, repair and return support, training equipment and personnel training, U.S. Government and contractor logistics, Quality Assurance Team support services, engineering and technical support, and other related elements of program support. The estimated cost is $49 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be an important force for political stability and economic progress in the Middle East.

Kuwait intends to use these defense articles and services to modernize its armed forces and expand its existing Army architecture to counter threats posed by potential attack. This proposed sale will also contribute to Kuwait's military goal of updating its capability while further enhancing its interoperability with the U.S. and other allies. This capability will serve to deter potential attacks against strategic targets across Kuwait, to include infrastructure and resources vital to the security of the U.S.

The proposed sale of this weapon system will not alter the basic military balance in the region.

The prime contractor is Lockheed Martin Corporation in Orlando, Florida. There are no known offset agreements proposed in connection with this sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The highest level for release of the AGM–114R3 HELLFIRE II is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal Confidential information. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified up to Secret.

2. Susceptibility of the AGM–114R3 HELLFIRE II to diversion or exploitation is considered low risk. Components of the system are also considered highly resistant to reverse engineering.

[FR Doc. 2012–16555 Filed 7–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–18 with attached transmittal and policy justification.

Dated: July 2, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUN 26 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-18, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $51 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001-06-C

Transmittal No. 12-18—Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kuwait
(ii) *Total Estimated Value:*

Major Defense Equipment *	$17 million
Other	$34 million
Total	$51 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 43 Joint Helmet Mounted Cueing System Cockpit Units, Single Seat Electronic Units, Helmet Display Units, spare and repair parts, support equipment, tool and test equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program and logistics support.

(iv) *Military Department:* Navy (LPY)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 26 June 2012

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification—Kuwait—Joint Helmet Mounted Cueing Systems (JHMCS)

The Government of Kuwait has requested a possible sale of 43 Joint Helmet Mounted Cueing System Cockpit Units, Single Seat Electronic Units, Helmet Display Units, spare and repair parts, support equipment, tool and test equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program and logistics support. The estimated cost is $51 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The Government of Kuwait is modernizing its fighter aircraft fleet to better support its own air defense needs. This proposed sale will contribute to Kuwait's military goal of updating its capability while further enhancing its interoperability with the U.S. and other allies.

The proposed sale of this equipment will not alter the basic military balance in the region.

The principal contractors will be Boeing Aerospace in St. Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require travel of U.S. Government or contractor representatives to Kuwait on a temporary basis for program, technical support, and management oversight.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–16556 Filed 7–5–12; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Summer Study Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (41 CFR 102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: July 26, 2012.

Time(s) of Meeting: 1530–1630.

Location: MIT Endicott House, 80 Haven Street, Dedham, MA 02026.

Purpose: Adopt the findings and recommendations for the following studies:

Strategic Direction for Army Science and Technology and *Small Unit Data to Decisions.*

Proposed Agenda:

Thursday 26 July 2012: 1530–1630—The study results for *Strategic Direction for Army Science and Technology* and *Small Unit Data to Decisions* studies are presented to the ASB. The ASB will deliberate and vote upon adoption of the findings and recommendations.

FOR FURTHER INFORMATION CONTACT: For information please contact Mr. Justin Bringhurst at *justin.bringhurst@us.army.mil* or (703) 617–0263 or Carolyn German at *carolyn.t.german@us.army.mil* or (703) 617–0258.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–16544 Filed 7–5–12; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of Draft Environmental Impact Statement for the Proposed Sierra Vista Specific Plan Project, in the City of Roseville, Placer County, CA, Corps Permit Application number SPK–2006–01050

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Sacramento District has prepared a Draft Environmental Impact Statement (DEIS) that analyzes the potential effects of implementing the proposed action and alternatives for development of a large-scale, mixed-use, mixed-density master-planned community on the approximately 1,612-acre Sierra Vista Specific Plan area, located in the City of Roseville, Placer County, California. The DEIS documents the existing condition of environmental resources in and around areas considered for development, and potential impacts on those resources as a result of implementing the alternatives. The alternatives considered in detail are: (a) No Action Alternative (no discharge of dredged and/or fill material into waters of the U.S.); (b) Proposed Action Alternative, the applicant group's preferred alternative; (c) Reduced Footprint/Increased Density Alternative; (d) Reduced Footprint/Same Density Alternative; (e) Focused Avoidance Alternative; and (f) Southwest Site, an off site alternative located in Southwest Placer County.

DATES: All written comments must be postmarked on or before 20 August 2012.

ADDRESSES: Comments may be submitted in writing to: James T. Robb, U.S. Army Corps of Engineers, Sacramento District, Regulatory Division; 1325 J Street, Room 1350, Sacramento, California 95814–2922, or via email to: *DLL-CESPK-RD-EIS-Comments@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: James T. Robb, (916) 557–7610.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement (Draft EIS) analyzes the potential effects of authorizing, via Department of the Army (DA) permits, the discharge of dredged or fill material into Waters of the United States, for the development of the Sierra Vista Specific Plan (Proposed Action). The Proposed Action consists of nine developments and their associated infrastructure integrated under one specific plan. The Proposed Action includes the following uses: 820 acres (332 hectares) of residential uses totaling 6,650 single- and multi-family residential units at buildout, 216 acres (87 hectares) of commercial and office uses, 61 acres (25 hectares) of public/quasi-public uses such as schools, 91 acres (37 hectares) of parks, 234 acres (95 hectares) of open space, and 177 acres (72 hectares) of roadways and paseos. Development under the Proposed Action, if authorized, would fill approximately 24.81 acres (10.04 hectares) of wetlands and other jurisdictional waters of the United States as defined by the CWA. This discharge of fill material requires approval from the U.S. Army Corps of Engineers (USACE) pursuant to Section 404 of the federal Clean Water Act, under which the USACE issues or denies DA permits for activities involving a discharge of dredged or fill materials into the waters of the United States, including wetlands. The USACE

intends to adopt this document to satisfy the requirements of the National Environmental Policy Act (NEPA).

USACE invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in this action are urged to participate in the NEPA process.

An electronic version of the DEIS may be viewed at the USACE, Sacramento District Web site: *http://www.spk.usace.army.mil/Missions/Regulatory/Overview/EnvironmentalImpactStatements.aspx.* In addition, a hardcopy of the DEIS may also be reviewed at the following locations:

(1) City of Roseville Permits Center, 311 Vernon Street, Roseville, California 95678.

(2) City of Roseville Public Library, 225 Taylor Street, Roseville, California 95678.

June 25, 2012.

William J. Leady,

Colonel, U.S. Army, District Engineer.

[FR Doc. 2012–16545 Filed 7–5–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of the Secretary; Race to the Top Annual Performance Report

SUMMARY: The American Recovery and Reinvestment Act provides $4.3 billion for the Race to the Top Fund (referred to in the statute as the State Incentive Grant Fund). This is a competitive grant program to encourage and reward States that are creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in four core education reform areas: (a) Adopting internationally-benchmarked standards and assessments that prepare students for success in college and in the workplace; (b) building data systems that measure student success and inform teachers and principals in how they can improve their practices; (c) increasing teacher effectiveness and achieving equity in teacher distribution; and (d) turning around our lowest-achieving schools.

DATES: Interested persons are invited to submit comments on or before August 6, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 04845. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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: Race to the Top Annual Performance Report.

OMB Control Number: 1894–0012.

Type of Review: Reinstatement.

Total Estimated Number of Annual Responses: 19.

Total Estimated Number of Annual Burden Hours: 1,845.

Abstract: In order to fulfill our responsibilities for programmatic oversight and public reporting, the Department has developed a Race to the Top Annual Performance Report that is tied directly to the Race to the Top selection criteria and priorities previously established and published in the **Federal Register**. The report is grounded in the key performance targets included in grantees' approved Race to the Top plans. Grantees will be required to report on their progress in the four core education reform areas and in Science, Technology, Engineering, and Mathematics. This reporting includes narrative sections on progress and key performance indicators. As was the case in the completion of the Race to the Top applications, grantees will coordinate with local educational agencies to collect and report on school and district-level data elements.

In order to robustly fulfill our programmatic and fiscal oversight responsibilities, it is essential that we gather this data from Race to the Top grantees and subgrantees. In the first year of the grant, the annual performance report (APR) was collected through an emergency clearance approval. In order to allow for a comprehensive assessment of progress for the remaining grant period to both update the public and Congress about Race to the Top and pinpoint areas requiring technical assistance, we are requesting a three-year clearance with this form.

Additionally, through the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (FY 2011 Appropriations Act), the Department made a total of $200 million in grants to seven additional States in Phase 3 to invest in a portion of their plans from the Phase 2 competition. The Department is requesting these States, who will complete a sub-set of the APR based on their approved plans, be included in the three-year clearance with this form.

Dated: July 2, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–16579 Filed 7–5–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Methane Hydrate Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 26, 2012. 8:00 a.m. to 8:30 a.m. (CDT)—Registration, 8:30 a.m. to 5:00 p.m. (CDT)—Meeting.

ADDRESSES: Marriott Houston Airport, 18700 John F. Kennedy Boulevard, Houston, Texas 77032.

FOR FURTHER INFORMATION CONTACT: Lou Capitanio, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Avenue SW., Washington, DC 20585. Phone: (202) 586–5098.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy's Methane Hydrate Research and Development Program.

Tentative Agenda: The agenda will include: Welcome and Introduction by the Designated Federal Officer; Welcome by the Chair of the Committee; Committee Business; Update on Prudhoe Bay Testing; FY 2012 Methane Hydrate Program Activities; Update on International Activity; Methane Hydrate Program Budget Requests; Methane Hydrate Program Strategic Direction Discussion; Advisory Committee Discussion; and Public Comments, if any.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Lou Capitanio at the phone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the following Web site: *http://www.fe.doe.gov/programs/oilgas/hydrates/Methane_Hydrates_Advisory_Committee.html.*

Issued at Washington, DC, on June 29, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–16550 Filed 7–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–79–000]

Alison Haverty v. Potomac-Appalachian Transmission Highline, LLC; Notice of Complaint and Expedited Answer Period

Take notice that on June 27, 2012, pursuant to section 206 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission); 18 CFR 385.206, Alison Haverty (Complainant) filed a formal complaint against Potomac-Appalachian Transmission Highline, LLC (Respondent), alleging that the Respondent has informed the Complainant that she may not participate in a meeting on the Respondent's Annual Transmission Revenue Requirement, despite having an interest in the outcome of the proceedings. In order to expedite the proceedings, answers and protests are due July 5, 2012.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

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 and 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 5, 2012.

Dated: June 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16561 Filed 7–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–76–000]

Maine Public Service Company; Notice of Initiation of Proceeding and Refund Effective Date

On June 28, 2012, the Commission issued an order that initiated a proceeding in Docket No. EL12–76–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the proposed formula rate by Maine Public Service Company. *Maine Public Service Company,* 139 FERC ¶ 61,262 (2012).

The refund effective date in Docket No. EL12–76–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: June 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16562 Filed 7–5–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0437; FRL–9352–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from May 1, 2012 to May 25, 2012, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before August 6, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0437, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The 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 regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an "existing" chemical or a "new" chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a "new chemical," while those that are on the TSCA Inventory are classified as an "existing chemical." For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for "test marketing" purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from May 1, 2012 to May 25, 2012, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—34 PMNS RECEIVED FROM 05/01/12 TO 05/25/12

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0337	05/02/2012	07/30/2012	CBI	(G) Coating additive	(G) Acid anhydride, polymer with aromatic isocyanate and polyalkyleneglycol, alkanol and hydroxyalkyl acrylate diazole reaction products and lactone homopolymer alkyl ester-blocked.
P–12–0338	05/03/2012	07/31/2012	3M Company	(S) Matrix resin for carbon fiber composites.	(G) Modified epoxy resin.
P–12–0339	05/04/2012	08/01/2012	Gelest, Inc	(S) Converted to silyl esters used in the hydrophization of inorganic surfaces; treatment of glass and inorganic surfaces to make them hydrophobic and oleophobic; research.	(S) Trichloro(3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)silane.
P–12–0340	05/04/2012	08/01/2012	Huntsman Corporation.	(G) Curing agent	(G) Reaction product of bisphenol a diglycidyl ether and an amineterminated cycloaliphatic propoxylate.
P–12–0341	05/04/2012	08/01/2012	CBI	(G) Dispersant for ink formulations.	(G) Octadecanoic acid, 12-hydroxy-, polymer with formaldehyde-aromatic amine reaction products.
P–12–0342	05/04/2012	08/01/2012	International flavors & fragrances, Inc.	(S) Fragrance ingredient for use in fragrances for soaps, detergents, cleaners and other household products.	(S) 3-[trans-4-(2-methylpropyl)cyclohexyl]propanal 3[cis-4-(2-methylpropyl)cyclohexyl]propanal.
P–12–0343	05/08/2012	08/05/2012	3M Company	(G) Monomer	(G) Polyether diacrylate.
P–12–0344	05/08/2012	08/05/2012	CBI	(G) Photoluminescent pigment.	(G) Complex calcium aluminate, rare earth doped.
P–12–0345	05/09/2012	08/06/2012	CBI	(G) Coating for open non-descriptive use.	(G) Ultra violet-curable urethane acrylate.

TABLE I—34 PMNS RECEIVED FROM 05/01/12 TO 05/25/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0346	05/09/2012	08/06/2012	Henkel Corporation	(S) Crosslinker in moisture cure sealant formulation.	(S) 2-propenone, o,o′,o-(ethylsilylidyne) trioxime″.
P–12–0347	05/09/2012	08/06/2012	CBI	(G) Pigment dispersant.	(G) Tall-oil, esters with maleated polyalkene glycol, compounds with amides from substituted amine and tall-oil acids.
P–12–0348	05/09/2012	08/06/2012	CBI	(S) Tin catalyst for polyurethane foam.	(S) Hexanoic acid, 3,5,5-trimethyl-, tin(2+) salt (2:1).
P–12–0351	05/10/2012	08/07/2012	CBI	(G) Coating additive	(G) Siloxanes and silicones, alkyl, alkyl propoxy ethyl, methyl octyl, alkyl polyfluorooctyl.
P–12–0352	05/14/2012	08/11/2012	CBI	(G) Site limited raw material for industry.	(G) Styrenated salicylic acid.
P–12–0353	05/15/2012	08/12/2012	CBI	(S) Extrusion tubing systems; injection molding of special applications.	(G) Polymer of aromatic dicarboxylic acid and alkane diamine.
P–12–0354	05/15/2012	08/12/2012	CBI	(G) Open, non-dispersive use.	(G) Blocked aliphatic polyisocyanate.
P–12–0355	05/16/2012	08/13/2012	CBI	(G) Chemical intermediate.	(G) Aromatic polyester.
P–12–0356	05/16/2012	08/13/2012	CBI	(G) Destructive use	(G) Intermediate for catalyst.
P–12–0357	05/16/2012	08/13/2012	Trinity manufacturing, Inc..	(S) Flame retardant in rubber products; extreme pressure additive in lubricants.	(S) Alkanes, C_{14-16}, chloro.
P–12–0358	05/17/2012	08/14/2012	CBI	(S) Wood coatings	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)1,3-propanediol, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, compd. with N,N-diethylethanamine.
P–12–0359	05/17/2012	08/14/2012	CBI	(G) Component in electronic manufacturing.	(G) Chlorosilane mixture.
P–12–0360	05/21/2012	08/18/2012	CBI	(G) Polymer reinforcemnt.	(G) Alkylsilane.
P–12–0361	05/22/2012	08/19/2012	CBI	(G) Pigment formulation additive.	(G) Benzene, 2,4-diisocyanato-1-alkyl-, homopolymer, 1-alkanol- and 1H-imidazole-1-propanamine- and 2-oxepanone-tetrahydro-2H-pyran-2-one polymer [2-(2-butoxymethylethoxy)methylethoxy]methylethyl ester-blocked.
P–12–0362	05/22/2012	08/19/2012	Scott Bader, Inc	(G) Fabrication of composite articles.	(G) Unsaturated urethane methacrylate.
P–12–0363	05/22/2012	08/19/2012	CBI	(G) Polymer admixture for cements.	(G) Alkylcarboxyalkenyl polymer with carboxyalkenyl dihydroxyalkylate, carboxyalkenyl and alkylalkenyl sulfonate sodium salt.
P–12–0364	05/22/2012	08/19/2012	Lubrigreen Biosynthetics.	(G) Biobased lubricant base oil.	(S) Fatty acids, C_{8-18} and C_{18} unsaturated, reaction products with isomerized oleic acid homopolymer, hydrogenated.
P–12–0365	05/22/2012	08/19/2012	Lubrigreen Biosynthetics.	(G) Biobased lubricant base oil.	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer, hydrogenated.
P–12–0366	05/22/2012	08/19/2012	Lubrigreen Biosynthetics.	(G) Lubricant base oil.	(S) Fatty acids, C_{8-18} and C_{18} unsaturated, reaction products with isomerized oleic acid homopolymer iso-bu ester, hydrogenated.
P–12–0367	05/22/2012	08/19/2012	Lubrigreen Biosynthetics.	(G) Lubricant base oil.	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer iso-bu ester, hydrogenated.

TABLE I—34 PMNS RECEIVED FROM 05/01/12 TO 05/25/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0368	05/22/2012	08/19/2012	Lubrigreen Biosynthetics.	(G) Lubricant base oil.	(S) Fatty acids, C_{8-18} and C_{18} unsaturated, reaction products with isomerized oleic acid homopolymer 2-ethylhexyl ester, hydrogenated.
P–12–0369	05/22/2012	08/19/2012	Lubrigreen Biosynthetics.	(G) Lubricant base oil.	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer 2-ethylhexyl ester, hydrogenated.
P–12–0370	05/23/2012	08/20/2012	CBI	(G) Additive for electronics.	(G) Phenyl silsesquioxane copolymer.
P–12–0371	05/23/2012	08/20/2012	Cytec Industries, Inc.	(G) Mineral reagent intermediate.	(G) Modified isothiocyanate compound.
P–12–0372	05/23/2012	08/20/2012	CBI	(G) Open, non-dispersive use.	(G) Brominated stryene polymer.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—22 NOCS RECEIVED FROM 05/01/12 TO 05/25/12

Case No.	Received date	Commencement notice end date	Chemical
P–09–0024	05/11/2012	05/07/2012	(G) Polymer of alkanedioic acid and alkanediamine.
P–09–0042	05/15/2012	01/29/2009	(G) Alkoxy phosphate ester salt.
P–09–0528	05/22/2012	05/10/2012	(G) Vinylsilane.
P–10–0135	05/25/2012	05/23/2012	(G) Fluoroketone.
P–10–0245	05/18/2012	04/04/2012	(G) Linseed oil, ester with pentaerythritol, polymer with 5-isocyanato-1-(isocyanatomethyl)-alkylcyclohexane.
P–10–0378	05/03/2012	04/30/2012	(G) Metal oxide modified with alkyl and vinyl-terminated polysiloxanes.
P–11–0020	05/10/2012	04/16/2012	(G) Acylated alkenyl succinimide.
P–11–0453	05/18/2012	05/15/2012	(G) Polyurethane prepolymer.
P–11–0589	05/10/2012	04/06/2012	(G) Copolymer of vinyl alkanoates and alkene sulfonic acid sodium salt.
P–12–0059	05/17/2012	04/27/2012	(G) Epoxy urethane.
P–12–0087	05/16/2012	04/22/2012	(G) Acrylate manufacture byproduct distillation residues.
P–12–0095	05/10/2012	05/07/2012	(G) Polyacrylate.
P–12–0103	05/25/2012	04/30/2012	(G) Alkene-substituted fatty acid methyl ester polymer.
P–12–0127	05/07/2012	04/10/2012	(G) Benzoic acid, bis(alkyl)-hydroxy-substituted phenyl ester.
P–12–0133	05/03/2012	04/08/2012	(S) 2-oxepanone, polymer with 1,6-diisocyanatohexane, 2,2-dimethyl-1,3-propanediol and 2,2′-oxybis[ethanol].
P–12–0153	05/23/2012	04/26/2012	(G) Acrylic copolymer.
P–12–0161	05/07/2012	04/26/2012	(G) Mdi modified polyester with 1,4 butanediol, iso-pr alcohol-blocked.
P–12–0163	05/04/2012	05/03/2012	(G) Organoazo cuprate sulfate sodium salts.
P–12–0164	05/04/2012	05/03/2012	(G) Aromatic diazo compound.
P–12–0166	05/23/2012	04/26/2012	(G) 1,2,3-propanetriol, homopolymer with cyclic ether.
P–12–0177	05/18/2012	05/15/2012	(G) 2-propenoic acid, 2-methyl-, telomer with 2-substituted alkyl alkenoate, 2-mercaptoethanol and sodium 2-methyl-2-[(1-substituted alken-1-yl)nitrogen containing derivative]-amino]-1-substituted alkane (1:1), sodium salt, peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–98–0149	05/16/2012	03/20/1998	(G) Epoxy acrylate.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: June 18, 2012.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–16453 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL9003–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 06/25/2012 Through 06/29/2012

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

SUPPLEMENTARY INFORMATION: EPA is seeking agencies to participate in its e-NEPA electronic EIS submission pilot. Participating agencies can fulfill all requirements for EIS filing, eliminating the need to submit paper copies to EPA Headquarters, by filing documents online and providing feedback on the process. To participate in the pilot, register at: *https://cdx.epa.gov.*

EIS No. 20120212, Draft EIS, BLM, NM, Rio Puerco Resource Management Plan, Implementation, Cibola, McKinney, Sandoval, Torrance, and Valencia Counties, NM, Comment Period Ends: 10/03/2012, Contact: Angel Martinez 505–761–8918.

EIS No. 20120213, Draft EIS, FRA, IL, Chicago to St. Louis High Speed Rail Program Tier 1, Improvements, Several Counties in IL and St. Louis County, MO, Comment Period Ends: 08/20/2012, Contact: Andrea Martin 202–493–6201.

EIS No. 20120214, Draft Supplement, NPS, 00, Yellowstone National Park Draft Winter Use Plan, Addressing the Issue of Oversnow Vehicle Use in the Interior of the Park, Implementation, WY, MT, and ID, Comment Period Ends: 08/20/2012, Contact: David Jacob 303–987–6970.

EIS No. 20120215, Draft Supplement, NRC, NY, Generic—License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, New Information, Westchester County, NY, Comment Period Ends: 08/20/2012, Contact: Michael Wentzel 301–415–6459.

EIS No. 20120216, Draft EIS, NOAA, OR, PROGRAMMATIC—Portland Harbor Restoration Plan, Restoration of Injured Natural Resources, Multnomah County, OR, Comment Period Ends: 10/08/2012, Contact: Jeff Shenot 301–427–8689.

EIS No. 20120217, Final EIS, BOEM, 00, Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales: 2012–2017 Western Planning Area Lease Sales 229, 233, 238, 246, and 248: Central Planning Area Lease Sales 227, 231, 235, 241, and 247, TX, LA, MS, AL and Northwestern FL, Review Period Ends: 08/06/2012, Contact: Gary Goeke 504–736–3233.

EIS No. 20120218, Final EIS, FRA, NY, ADOPTION—East Side Access Project, Transportation Improvements, To Provide Railroad Rehabilitation and Improvement Financing Program, New York, Queens, Bronx, Nassau, and Suffolk Counties, NY, Review Period Ends: 08/06/2012, Contact: Michelle Fishburne 202–493–0398. The U.S. Department of Transportation's Federal Railroad Administration (FRA) has adopted the Federal Transit Administration's FEIS filed 3–9–2001. FRA was not a Cooperating Agency for the above final EIS. Recirculation of the document is necessary under Section 506.3(b) of the Council on Environmental Quality Regulations.

EIS No. 20120219, Final EIS, USFS, NM, Santa Fe National Forest Travel Management, Proposes to Provide for a System of Road, Trails, and Areas Designated for Motorized Use, Santa Fe, NM, Review Period Ends: 08/06/2012, Contact: Julie Bain 505–438–5443.

EIS No. 20120220, Final EIS, BLM, NV, Hycroft Mine Expansion Project, Proposes to Expand Mining Activities on BLM Managed Public Land and Private Land, Approval, Humboldt and Pershing Counties, NV, Review Period Ends: 08/06/2012, Contact: Kathleen Rehberg 775–623–1739.

EIS No. 20120221, Draft EIS, USACE, CA, Mather Specific Plan Project, Development of Large Scale Mixed Use Development to Promote Economic and Wetland Conservation Opportunities, Sacramento County, CA, Comment Period Ends: 08/20/2012, Contact: Kathleen Dadey 916–557–5250.

EIS No. 20120222, Final EIS, BOEM, 00, PROGRAMMATIC EIS—Outer Continental Shelf Oil and Gas Leasing Program—2012–2017 in Six Planning Area, Western, Central and Eastern Gulf of Mexico, Cook Inlet, the Beaufort Sea, and the Chukchi Sea, Review Period Ends: 08/06/2012, Contact: James F. Bennett 703–787–1660.

Amended Notices

EIS No. 20050514, Final EIS, NIH, ME, National Emerging Infectious Diseases Laboratories, Construction of National Biocontainment Laboratory, BioSquare Research Park, Boston University Medical Center Campus, Boston, MA, Review Period Ends: 01/09/2006, Contact: Valerie Nottingham 301–496–7775.

In Support of this Final ESI, NIH is publishing a Final Supplementary Risk Assessment for the Boston University National Emerging Infectious Diseases Laboratories (NEIDL). The wait period will end on 08/06/2012; for more information, please visit *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/default.asp.*

EIS No. 20100269, Final EIS, USAF, ND, ADOPTION—Grand Forks Air Force Base Project, Beddown and Flight Operations of Remotely Piloted Aircraft, Base Realignment and Closure (BRAC), ND, Contact: Doug Allbright 618–229–0841.

ADOPTION —The U.S. Department of Transportation's Federal Aviation Administration adopted partial of the U.S. Air Force's Final EIS filed with EPA. The FAA was a cooperating Agency on the USAF's EIS therefore, distribution was not necessary for this adoption and there is no comment period.

EIS No. 20120207, Final EIS, USACE, LA, WITHDRAWN—Mississippi River Gulf Outlet Ecosystem Restoration, To Develop a Comprehensive Ecosystem Restoration Plan to Restore the Lake Borgne Ecosystems, LA and MS, Review Period Ends: 07/30/2012, Contact: Tammy Gilmore 504–862–1002 Revision to FR Notice Published on 06/29/2012: Officially Withdrawn by the USACE.

Dated: July 2, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–16576 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9697–3]

Notice of the Peer Review Meeting for EPA's Draft Report Entitled An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, AK

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of external peer review meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Versar, Inc., an EPA contractor for external peer review, has convened a panel of experts and will organize and conduct an independent expert external peer review meeting on August 7–9, 2012, to review the draft report entitled *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.* Versar, Inc. invites the public to register to attend the first two days of this meeting as observers. In addition, Versar, Inc. invites the public to register to provide oral testimony

during Day 1 (August 7, 2012) of the external peer review meeting. The panel will meet privately on Day 3 (August 9, 2012) of the meeting. The expert panel is charged with reviewing the scientific and technical merit of the draft assessment. The panel will not be making recommendations to the EPA concerning any potential future actions or policies. Therefore, the peer review meeting will focus on issues of science relevant to the assessment, rather than its policy implications. The panel will have access to public comments received in the official public docket (docket ID number EPA–HQ–ORD–2012–0276) during the assessment's public comment period, as well as oral comments made on Day 1 of the peer review meeting. The draft assessment is available through *www.regulations.gov* and at *www.epa.gov/bristolbay*. In preparing the final assessment, EPA will consider Versar, Inc.'s report of the comments and recommendations from the external peer review meeting, as well as written public comments received through the official public docket. The final peer review report prepared by Versar, Inc. will be made available to the public. EPA has released this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

DATES: The public peer review panel meeting will be held on August 7–8, 2012, beginning and ending at approximately 8:30 a.m. and 5:00 p.m. (AKDT) on both days.

ADDRESSES: The independent expert external peer review meeting will be held at the Dena'ina Civic & Convention Center, located at 600 West Seventh Avenue, Anchorage, Alaska.

Meeting Background: As part of the peer review process for the EPA's draft assessment report, the public portion of the peer review meeting will be held on August 7–8, 2012 at the Dena'ina Civic & Convention Center in Anchorage, Alaska. On both days, the meeting will begin at 8:30 a.m. (AKDT) and will end at approximately 5:00 p.m. (AKDT). Members of the public and any other interested parties may register to attend both days of the meeting as observers, and to offer oral testimony on the first day of the meeting.

The focus of this peer review meeting is the scientific content and merit of the EPA's draft assessment. Public speakers are encouraged to focus on issues directly relevant to science-based aspects of the assessment, and to address specific scientific points in their oral testimony. The peer review process is separate from the EPA public comment meetings held in early June that enabled members of the public to provide comments and voice opinions concerning the EPA's draft assessment report and its potential policy implications for the public docket.

Day 1 of the meeting (August 7, 2012) will be dedicated to hearing oral comments on the draft assessment. Members of the public who have registered in advance to provide oral comments will have the opportunity to speak during the observer comment session. Each speaker will be allowed between 3–5 minutes, depending on number of speakers registered. Given time constraints, a maximum of 100 speakers will be allowed to offer testimony. If more than 100 speakers register to provide oral comments, speakers will be selected by Versar in a manner designed to optimize representation from all organizations, affiliations, and present a balance of science issues relevant to the Agency's science assessment. Additional information on selection of speakers and speaking times will be sent out by August 3, to all individuals who register to speak.

To accommodate as many speakers as possible, registered speakers will present oral comments only, without visual aids or written material. All members of the public, including registered observers and speakers, are encouraged to submit written comments and materials to the official public docket for the draft assessment (docket ID number EPA–HQ–ORD- 2012–0276) by the close of the public comment period on July 23, 2012. Panel members will have access to any written comments and materials submitted to the official public docket by this deadline. Registered observers and speakers will not be allowed to distribute any written materials directly to the peer review panel. To submit written comments, please follow one of the methods outlined in the previous **Federal Register** notice, issued on May 25, 2012, initiating the assessment's public comment period: **Federal Register** Volume 77, Number 102 (*http://www.gpo.gov/fdsys/pkg/FR–2012–05–25/html/2012–12808.htm*).

Day 2 of the meeting (August 8, 2012) will be devoted to deliberations of the EPA's draft assessment by the peer review panel, guided by the charge questions provided to the public for public comment. Registered observers may attend and observe the peer review panel deliberations on Day 2, but will not be allowed to address the panel or provide oral or written comments.

Registration: To attend the August 7–8 public portion of the peer review meeting, you must register for the meeting by 11:59 p.m. (EDT) on July 23, 2012. You can register for the meeting by visiting *http://www.versar.com/epa/bristolbayregistration.html*, completing the online registration form, and submitting the required information. You can also register through U.S. Postal Service or overnight/priority mail by sending the necessary registration information (see Required Registration Information) to the Versar Meeting Coordinator, Ms. Brittany Ekstrom, Versar, Inc., 6850 Versar Center, Springfield, VA 22151; Telephone: (703) 642–6767. Registrations sent via U.S. Postal Service or overnight/priority mail must be received by 11:59 p.m. (EDT) on July 23, 2012. There will be no on-site registration, so members of the public who do not register by July 23, 2012 via one of the methods detailed above will not be able to attend the peer review meeting.

Required Registration Information: To register for the meeting online or via post, you must provide your full name, organization or affiliation, and contact information. You must also indicate which days you plan to attend the meeting and if you are interested in making an oral statement during the public comment session on Day 1 of the meeting. If you register to speak, you must also indicate if you have any special requirements related to your oral comments (e.g., translation).

If you indicate that you wish to make oral comments, you will be asked to select one category most closely reflecting the content of your comments. These comment categories are: (i) Mine scenario and operational modes; (ii) potential failures and probabilities; (iii) hydrology; (iv) toxicity; (v) potential effects on Alaska Native culture; (vi) potential effects on fish; (vii) potential effects on wildlife; and (viii) other issues. Should more than 100 speakers register, these categories will be used to ensure that a balance of substantive science issues relevant to the assessment are heard.

FOR FURTHER INFORMATION CONTACT: Questions regarding logistics or registration for the external peer review meeting should be directed to Ms. Brittany Ekstrom, Versar, Inc., 6850 Versar Center, Springfield, VA, 22151; telephone: (703) 642–6767; or via email at *BEkstrom@versar.com*.

SUPPLEMENTARY INFORMATION:

I. Information About the Project

The EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources. The EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a sound scientific and technical foundation for future decision making. The Web site that describes the project is *www.epa.gov/bristolbay.*

II. Information About the Peer Review Panel

The EPA released the draft assessment for the purposes of public comment and peer review on May 18, 2012. Consistent with guidelines for the peer review of highly influential scientific assessments, EPA asked a contractor (Versar, Inc.) to assemble a panel of experts to evaluate the draft report. Versar, Inc. evaluated the 68 candidates nominated during a previous public comment period (February 24, 2012 to March 16, 2012) and sought other experts to complete this peer review panel. The twelve peer review panel members were made public in EPA's previous FRN, issued on June 5, 2012. The panelist's names are included below, with corrections made to account for errors present in the June 5, 2012 FRN:

Mr. David Atkins, Watershed Environmental, LLC.—Expertise in mining and hydrology.
Mr. Steve Buckley, WHPacific—Expertise in mining and seismology.
Dr. Courtney Carothers, University of Alaska Fairbanks—Expertise in indigenous Alaskan cultures.
Dr. Dennis Dauble, Washington State University—Expertise in fisheries biology and wildlife ecology.
Dr. Gordon Reeves, USDA Pacific NW Research Station—Expertise in fisheries biology and aquatic biology.
Dr. Charles Slaughter, University of Idaho—Expertise in hydrology.
Dr. John Stednick, Colorado State University—Expertise in hydrology and biogeochemistry.
Dr. Roy Stein, Ohio State University—Expertise in fisheries and aquatic biology.
Dr. William Stubblefield, Oregon State University—Expertise in aquatic biology and ecotoxicology.
Dr. Dirk van Zyl, University of British Columbia—Expertise in mining.
Dr. Phyllis Weber Scannell—Expertise in aquatic ecology and ecotoxicology.
Dr. Paul Whitney—Expertise in wildlife ecology and ecotoxicology.

Dated: June 29, 2012.

Darrell Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–16441 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9351–8]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless a registrant withdraws its request. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 2, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Katie Weyrauch, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; email address: *weyrauch.katie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 344 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Tables 1 and 2 of this unit.

Table 2 contains a list of registrations for which companies paying at one of the maintenance fee caps requested cancellation in the FY 2012 maintenance fee billing cycle. Because maintaining these registrations as active would require no additional fee, the Agency is treating these requests as voluntary cancellations under 6(f)(1).

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000100–00863	Sentinel 40WG Turf Fungicide	Cyproconazole.
000100–00874	Sentinel 40 WG for Repackaging Use Only	Cyproconazole.
000352–00712	Dupont Throttle MP Herbicide	Sulfentrazone, Sulfometuron, Chlorsulfuron.
000527–00106	ML-13G	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
000527–00122	ML-8S	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
000527–00127	CS-EZ	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
001903–00028	Petco Ear Mite Remedy	Pyrethrins, Piperonyl butoxide.
002724–00616	Speer Dairy and Livestock RTU Spray	Piperonyl butoxide, Pyrethrins.
003090–00165	Sanitized Brand T96-21	Triclosan.
005204–00001	Biomet TBTO	Tributyltin oxide.
005383–00127	Microbanish R	Triclosan.
009339–00012	Flextin Wood Treatment Concentrate	Tributyltin oxide.
009339–00014	Flexgard Waterbase Preservative	Tributyltin oxide.
009688–00300	RG Indoor Insect Control	Piperonyl butoxide, Pyrethrins.
010088–00070	Bio-Cide	Carbamodithioic acid, methyl-, monopotassium salt, Carbamodithioic acid, cyano-, disodium salt.
040849–00014	Enforcer Flea and Tick Shampoo for Pets	MGK 264, Piperonyl butoxide, Pyrethrins, Permethrin.
040849–00033	Enforcer Ant & Roach Killer III	MGK 264, Pyrethrins, Permethrin.
040849–00034	Enforcer Flea & Tick Spray for Pets II	Piperonyl butoxide, Permethrin, Pyrethrins.
045385–00089	Cenol Space and Contact Spray	Phenothrin, Tetramethrin.
047000–00044	Home-Garden and Pet Insecticide	MGK 264, Piperonyl butoxide, Pyrethrins.
050600–00012	Alas-478	Phosphoric acid, Benzenesulfonic acid, C10-16-alkyl derivs.
058687–00001	Chlorine—Liquified Gas Under Pressure	Chlorine.
059807–00013	Pyriproxyfen 11.23% Insect Growth Regulator	Pyriproxyfen.
063191–00010	St. Gabriel Laboratories Hot Pepper Wax Insect Repellent	Capasaicin.
070385–00002	Microban Institutional Spray X-580	Bromine, MGK–264, Piperonyl butoxide, Pyrethrins, o-Phenylphenol, Benzenemethanaminium, N,N-dimethyl-N-(2-(2-(4-(1,1,3,3-tetramethylbutyl)phenoxy)ethoxy)ethyl)-, chloride.
CO020008	Distinct Herbicide	Diflufenzopyr-sodium Dicamba, sodium salt.
MA070001	Dual Magnum	S-Metolachlor.
PR110003	Scorpion Insecticide	Dinotefuran.
WA030004	Formaldehyde Solution 37	Formaldehyde.
WA030014	WIN-FLO 4F	Pentachloronitrobenzene.
WA910013	Clean Crop Phorate 20G	Phorate.

TABLE 2—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION DUE TO NON-PAYMENT OF MAINTENANCE FEES

Registration No.	Product name	Chemical name
000100–00897	Zephyr 0.15 EC Miticide/insecticide	Abamectin.
000100–00902	Emamectin Benzoate Technical	Emamectin benzoate.
000100–01109	Cyper EC Insecticide	Cypermethrin.
000100–01138	Thiolux Jet	Sulfur.
000100–01197	Azoxystrobin Mold-Retardant 2.08 SC	Azoxystrobin.
000100–01223	Tecto MP 340	Thiabendazole.
000100–01229	Azo-Shield	Azoxystrobin.
000100–01233	Propi-Shield	Propiconazole.
000100–01234	Cypro-Shield	Cyproconazole.
000100–01237	Fludi-Shield	Fludioxonil.
000100–01252	Tecto-Shield MP 100	Thiabendazole.
000100–01255	Difeno-Shield	Difenoconazole.

TABLE 2—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION DUE TO NON-PAYMENT OF MAINTENANCE FEES—Continued

Registration No.	Product name	Chemical name
000228–00160	Riverdale 3 Plus 3 Amine	2,4-D, dimethylamine salt; MCPP-p, DMA salt.
000228–00220	Riverdale 1.25% Hexazinone Liquid Ready-To-Use Weed and Brush Killer.	Hexazinone.
000228–00221	Riverdale 2D + 2DP Amine	2,4-D, dimethylamine salt; 2,4-DP-p, DMA salt.
000228–00230	Riverdale 1% Bromacil Granular Weed Killer	Bromacil.
000228–00231	Riverdale 2% Bromacil Granular Weed Killer	Bromacil.
000228–00232	Riverdale 4% Bromacil Granular Weed Killer	Bromacil.
000228–00240	Riverdale Liquid Chlorine Sanitizer	Sodium hypochlorite.
000228–00241	Riverdale 2.5% Bromacil Liquid Ready-To-Use Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt.
000228–00263	Riverdale Super Green Weed and Feed	2,4-D, 2-ethylhexyl ester.
000228–00290	Riverdale MCPA-6 Amine	MCPA, dimethylamine salt.
000228–00358	Esteron 99 Concentrate Herbicide	2,4-D, 2-ethylhexyl ester.
000228–00364	Riverdale Credit Herbicide	Glyphosate-isopropylammonium.
000228–00375	Riverdale Corsair Selective Herbicide	Chlorsulfuron.
000228–00384	Riverdale Tahoe 3A Herbicide	Triclopyr, triethylamine salt.
000228–00385	Riverdale Tahoe 4E Herbicide	Acetic acid, ((3,5,6-trichloro-2-pyridinyl)oxy)-, 2-butoxyethyl ester.
000228–00394	Riverdale Resound 720	Chlorothalonil.
000228–00396	Riverdale Banderole Fungicide	Propiconazole.
000228–00398	Riverdale Endurance Herbicide	Prodiamine.
000228–00399	Riverdale Predict Herbicide	Norflurazon.
000228–00437	Bifenthrin 0.029% Plus Fertilizer	Bifenthrin.
000228–00438	Bifenthrin 7.9% FL Nursery	Bifenthrin.
000228–00439	Bifenthrin PI Granular Insecticide	Bifenthrin.
000228–00450	Menace PL Granular Insecticide	Bifenthrin.
000228–00452	Menace GC Granular Insecticide	Bifenthrin.
000228–00454	Menace Nursery Granular Insecticide	Bifenthrin.
000228–00456	Proclipse 65 WDG	Prodiamine.
000228–00481	Bifenthrin 0.058% Granular Insecticide	Bifenthrin.
000228–00482	Bifenthrin 0.115% Granular	Bifenthrin.
000228–00486	Mantra 2F Greenhouse and Nursery Insecticide	Imidacloprid.
000228–00497	Bifenthrin 0.2% Granular	Bifenthrin.
000228–00518	Tahoe 3A Herbicide	Triclopyr, triethylamine salt.
000228–00519	Menace GC 0.058% Plus Fertilizer	Bifenthrin.
000228–00532	Imidacloprid 4.6 F PCO	Imidacloprid.
000228–00550	ETI 108 10 H	Dithiopyr.
000228–00556	Menace 25 MC	Bifenthrin.
000228–00559	NUP06211 GC Insecticide	Bifenthrin; Imidacloprid.
000228–00560	NUP 06211	Bifenthrin; Imidacloprid.
000228–00561	Trooper 101 Mixture Herbicide	Picloram; 2,4-D, Triisopropanolamine salt.
000228–00574	Atera GC Granular Insecticide	Bifenthrin; Imidacloprid.
000228–00575	Atera LC Granular Insecticide	Bifenthrin; Imidacloprid.
000228–00576	Atera 0.36 GC Granular Insecticide	Bifenthrin, Imidacloprid.
000228–00577	Atera 0.36 LC Granular Insecticide	Bifenthrin, Imidacloprid.
000228–00578	Atera 0.3 GC Fertilizer Insecticide	Bifenthrin, Imidacloprid.
000228–00579	Atera 0.3 LC Fertilizer Insecticide	Bifenthrin, Imidacloprid.
000228–00580	Atera 0.225 GC Fertilizer Insecticide	Bifenthrin, Imidacloprid.
000228–00581	Atera 0.225 LC Fertilizer Insecticide	Bifenthrin, Imidacloprid.
000228–00582	Atera 0.18 GC Fertilizer Insecticide	Bifenthrin, Imidacloprid.
000228–00583	Atera 0.18 LC Fertilizer Insecticide	Bifenthrin, Imidacloprid.
000228–00584	Atera 0.15 GC Fertilizer Insecticide	Bifenthrin, Imidacloprid.
000228–00585	Atera 0.15 LC Fertilizer Insecticide	Bifenthrin, Imidacloprid.
000228–00598	Nufarm Bifenthrin Pro 2	Bifenthrin.
000228–00605	Nufarm Permethrin Pro	Permethrin.
000228–00622	Chlorpyrifos SPC 0.5% MCB Insecticide	Chlorpyrifos.
000228–00634	Quinclorac G-Pro 75 DF	Quinclorac.
000228–00645	Oxadiazon E-Pro Granular Herbicide	Oxadiazon.
000228–00646	Mepiquat E-Ag Plant Growth Regulator	Mepiquat chloride.
000228–00648	T-Pac E-Pro EC Plant Growth Regulator	Trinexapac-ethyl.
000228–00650	ETI 106 01 I—NC	Abamectin.
000228–00651	ETI 106 01 I—C	Abamectin.
000228–00663	ETI 105 01 H	Oxyfluorfen.
000228–00664	ETI 114 01 H	Nicosulfuron.
000228–00677	ETI 114 02 H	Nicosulfuron.
000264–00380	Prep Brand Plant Regulator for Cotton	Ethephon.
000264–00686	Tribute Solo WG32 Herbicide	Foramsulfuron; Iodosulfuron-methyl-sodium.
000264–00700	Dropp SC Cotton Defoliant	Thidiazuron.
000264–00732	Sencor 70% Wettable Powder Sugarcane Herbicide	Metribuzin.
000264–00821	Ginstar(R) 4.5 SC Cotton Defoliant	Diuron; Thidiazuron.
000264–00828	Gaucho 600 SC Insecticide	Imidacloprid.
000264–00857	NTN 33893 Liquid Ant Bait	Imidacloprid.

TABLE 2—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION DUE TO NON-PAYMENT OF MAINTENANCE FEES—Continued

Registration No.	Product name	Chemical name
000264–00962	Gaucho 480 FS Flowable	Imidacloprid.
000264–00963	Gaucho 75 ST FS Insecticide	Imidacloprid.
000264–01037	RTP 072006 Liquid Ant Bait	Imidacloprid.
000264–01046	Thidiazuron—Tech	Thidiazuron.
000264–01058	RTP 017495	Imidacloprid.
000264–01110	Aeris Votivo	Imidacloprid; Thiodicarb; Bacillus firmus strain I–1582.
000524–00370	Roundup L & G Concentrate Grass & Weed Killer	Glyphosate-isopropylammonium.
000524–00440	Roundup Rainfast Herbicide	Glyphosate-isopropylammonium.
000524–00526	MON 37525W Herbicide MON 37525 NC	Sulfosulfuron.
000524–00541	MON 78736 Herbicide	Glyphosate-isopropylammonium; Triclopyr, triethylamine salt.
000524–00542	MON 78783 Herbicide	Glyphosate-isopropylammonium; Triclopyr, triethylamine salt.
000524–00546	MON 79158 Herbicide	Diquat dibromide; Glyphosate-isopropylammonium; Imazapic-ammonium.
000524–00547	MON 78868 Herbicide	Diquat dibromide; Glyphosate-isopropylammonium; Imazapic-ammonium.
000577–00552	Vinyl Waterbase Antifouling Paint 888	Cuprous oxide.
000577–00553	8010–682–6437 Paint, Antifouling, Vinyl-Red MIL-P-15931B, Formula 121/.	Cuprous oxide.
000577–00554	8010–290–4247 Paint, Antifouling Vinyl-Black MIL-P-16189B FORM 129/63.	Copper as elemental; Cupric oxide; Cuprous oxide.
000577–00555	Paint, Antifouling, Cold Plastic Shipbottom, Formula 105 MIL-P-19451B.	Cuprous oxide.
000577–00563	Copper Paint No. 1	Cuprous oxide.
000577–00564	Copper Paint No. 2	Cuprous oxide.
000577–00565	Rappahannock Copper Paint #4	Cuprous oxide.
000577–00566	Rappahannock Copper Paint #7	Cuprous oxide.
000577–00567	Copper Paint No. 3 Rappoxy 75 Red	Cuprous oxide.
000577–00568	Copper Paint No. 5 Rappoxy 60 Red	Cuprous oxide.
000829–00279	SA-50 Dursban 2E Insecticide	Chlorpyrifos.
000829–00280	SA-50 Dursban 4-E Insecticide	Chlorpyrifos.
000829–00294	Deltamethrin 0.1% Granules	Deltamethrin.
000961–00273	Lebanon Preemergence Weed Control	DCPA.
000961–00376	Koos Crabgrass Preventer with 0.574 Barricade Preemergence Herbicide.	Prodiamine.
000961–00377	Koos Crabgrass Preventer with 00.383 Barricade Preemergence Herbicide.	Prodiamine.
000961–00384	Par Ex Slow Release Fertilizer with 0.21% Barricade Herbicide.	Prodiamine.
000961–00385	Par Ex Slow Release Fertilizer with 0.275% Barricade Herbicide.	Prodiamine.
000961–00386	Par Ex Slow Release Fertilizer with 0.30% Barricade	Prodiamine.
001381–00217	Prosolutions Propiconazole	Propiconazole.
001529–00047	Fungitrol 2010	Chlorothalonil; Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
001529–00048	Fungitrol 2002	Chlorothalonil; 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)-.
001677–00208	Spiriclens Spray	Isopropyl alcohol.
001677–00224	Premier 70/30 Sterile IPA Spray	Isopropyl alcohol.
001677–00227	Performance LS Laundry Sanitizer	Ethaneperoxoic acid; Hydrogen peroxide.
002517–00080	Sergeant's Cyphenothrin + IGR Squeeze-On for Dogs	Cyphenothrin; Pyriproxyfen.
002517–00085	Sergeant's Cyphenothrin Squeeze-On for Dogs	Cyphenothrin.
002596–00122	Hartz 2 in 1 Flea & Tick Spray with Deodorant for Dogs III	Gardona (cis-isomer).
002596–00123	Hartz 2 in 1 Fast Acting Flea & Tick Spray for Cats With Rabon.	Gardona (cis-isomer).
002724–00651	Farnam Natural Bug Guard Mist A	Pyrethrins; Piperonyl butoxide.
002724–00690	Ion Moss	Copper as elemental; Zinc.
003008–00017	Osmose K–33–C (72%) Wood Preservative	Arsenic oxide; Chromic acid; Cupric oxide.
003432–00028	On Guard Premium Pool Algaecide Granular Concentrate	Poly(oxyethylene(dimethylimino)ethylene(dimethylimino) ethylene dichloride).
004787–00036	Glyfos Au Herbicide	Glyphosate-isopropylammonium.
004822–00410	Fresh Scent Vanish Thick Liquid Toilet Bowl Cleaner	Alkyl* dimethyl ethylbenzyl ammonium chloride; Hydrochloric acid.
004822–00450	Off! Yard & Deck Area Repellent II	Permethrin; d-trans-Allethrin.
005785–00068	Bromine Chloride	Bromine chloride.
006836–00210	Dantobrom TC	1-Bromo-3-chloro-5,5-dimethylhydantoin; 1,3-Dichloro-5,5-dimethylhydantoin; 1,3-Dichloro-5-ethyl-5-methylhydantoin.
007313–00020	ABC-3 Marine Antifouling Paint	Cuprous oxide.
007969–00223	Regent TS Insecticide	Fipronil.

TABLE 2—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION DUE TO NON-PAYMENT OF MAINTENANCE FEES—Continued

Registration No.	Product name	Chemical name
008622–00026	Halobrom-G	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
008622–00027	Halobrom T-30	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
008622–00065	Biobrom C-100T	2,2-Dibromo-3-nitrilopropionamide.
008622–00066	Sodium Bromide 45%	Sodium bromide.
008622–00067	Sodium Bromide 43%	Sodium bromide.
008622–00076	Fuzzicide-SP (Ammonium Bromide)	Ammonium bromide.
035935–00001	Trifluralin 50W	Trifluralin.
040810–00020	Irgaguard F3000	Thiabendazole.
042964–00031	A-456-N	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride.
045309–00010	Aqua Clear Algae Preventative	Poly(oxyethylene(dimethylimino)ethylene(dimethylimino) ethylene dichloride).
045309–00011	Spa Clear Non-Foaming Algaecide	Poly(oxyethylene(dimethylimino)ethylene(dimethylimino) ethylene dichloride).
045309–00037	Swim Free Non Foaming Black Algaecide for Swimming Pool.	Poly(oxyethylene(dimethylimino)ethylene(dimethylimino) ethylene dichloride).
045309–00038	Hydrology Cooling Tower Microbiocide	Poly(oxyethylene(dimethylimino)ethylene(dimethylimino) ethylene dichloride).
045309–00080	Aqua Clear Algae Eliminator	Poly(oxyethylene(dimethylimino)ethylene(dimethylimino) ethylene dichloride).
048273–00012	Asulam Herbicide	Asulam, sodium salt.
048273–00020	Marman Mancozeb 80% WP	Mancozeb.
050534–00114	Tuffcide 960	Chlorothalonil.
050534–00115	Tuffcide 404	Chlorothalonil.
050534–00197	Tuffcide 500	Chlorothalonil.
050534–00227	Tuffcide 960 MUP	Chlorothalonil.
050534–00228	Tuffcide 404 MUP	Chlorothalonil.
051036–00448	Glyphosate Isopropylamine Salt 62% Technical Solution	Glyphosate-isopropylammonium.
055146–00051	ACP Flowable Sulfur	Sulfur.
055146–00061	Gibgro 2LS	Gibberellic acid.
055146–00066	Gibgro 10% Powder	Gibberellic acid.
055146–00067	Gibgro 20% Tablet	Gibberellic acid.
055146–00068	Gibgro P	Gibberellic acid.
055146–00069	Gibgro 2L	Gibberellic acid.
055146–00089	Fireman	Calcium oxytetracycline.
055146–00095	Enable WSP/Agritin Agricultural Fungicide Co-Pack	Fenbuconazole; Fentin hydroxide.
055146–00104	NUP 08103	Myclobutanil.
061272–00004	Weed Out 2,4-D Amine 6 Pound	2,4-D, dimethylamine salt.
061483–00011	P1/P13 Creosote Oil	Creosote oil (Note: Derived from any source).
061483–00012	P2 Creosote Coal Tar Solution	Coal tar; Creosote oil.
066330–00397	Supremacy Herbicide Tank Mix	Fluroxypyr 1-methylheptyl ester; Thifensulfuron; Tribenuron-methyl.
066330–00398	Everest KO Herbicide Tank Mix	Flucarbazone-sodium; Fluroxypyr 1-methylheptyl ester.
067071–00012	Acticide DQ	5-Chloro-2-methyl-3(2H)-isothiazolone; 2-Methyl-3(2H)-isothiazolone.
067071–00052	Acticide MBL 5505	Bronopol; 2-Methyl-3(2H)-isothiazolone; 1,2-Benziso-thiazolin-3-one.
067262–00008	Aqua Chem Balanced for Clean Spas Algaecide	Poly(oxyethylene (dimethylimino) ethylene (dimethylimino) ethylene dichloride).
067690–00027	Spin Out 300	Copper hydroxide.
069681–00023	Clor Mor Cal-Shock Plus	Calcium hypochlorite; Boron sodium oxide, pentahydrate.
070506–00117	Clopyr Brush	3,6-Dichloro-2-pyridinecarboxylic acid, alkanolamine salts.
070506–00215	Orbit 45WP Agpak/Dupont Super Tin 80WP Agpak	Fentin hydroxide; Propiconazole.
071368–00015	2,4-D 2-EHE Gel Broadleaf Herbicide	2,4-D, 2-ethylhexyl ester.
071368–00016	Rhonox (R) EW Broadleaf Herbicide	MCPA, 2-ethylhexyl ester.
071368–00019	Weedone 638 Solventless Broadleaf Herbicide	2,4-D; 2,4-D, 2-ethylhexyl ester.
071368–00023	Nufarm Kamba 4SL Herbicide	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1).
071368–00026	Mextrol WP Herbicide	Bromoxynil octanoate.
071368–00041	Pasture MD	2,4-D, dimethylamine salt; Dicamba, dimethylamine salt; Metsulfuron.
071368–00064	Assert SG Herbicide	Imazamethabenz.
071368–00067	Bromox/MCPA 2-2 Herbicide	Bromoxynil octanoate; MCPA, 2-ethylhexyl ester.
071368–00068	Bromox + Atrazine	Atrazine; Bromoxynil octanoate.
071368–00069	Bromox 2E	Bromoxynil octanoate.
071368–00072	Cutback	2,4-D, triisopropanolamine salt; 3,6-Dichloro-2-pyridinecarboxylic acid, alkanolamine salts.
071368–00073	NUP 05 022 Herbicide	Clopyralid; MCPA, 2-ethylhexyl ester.
085827–00001	Green Light Wettable Dusting Sulphur	Sulfur.

TABLE 2—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION DUE TO NON-PAYMENT OF MAINTENANCE FEES—Continued

Registration No.	Product name	Chemical name
085827–00010	Green Light Com-Pleet 18% Systemic Grass & Weed Killer.	Glyphosate-isopropylammonium.
085827–00011	Green Light Com-Pleet 1.92% Systemic Grass & Weed Killer.	Glyphosate-isopropylammonium.
085827–00012	Green Light Com-Pleet Systemic Grass & Weed Killer	Glyphosate-isopropylammonium.
085827–00013	Green Light Permethrin Dust	Permethrin.
AK020001	Linex 50 DF	Linuron.
AL020007	Super Boll	Ethephon.
AL020008	Acephate 75SP	Acephate.
AL070004	Provado 1.6 Flowable Insecticide	Imidacloprid.
AR050002	Ricestar HT Herbicide	Fenoxaprop-p-ethyl.
AR050008	Ignite 280 SL Herbicide	Glufosinate.
AR960004	Linex 4L	Linuron.
AZ060010	Karate Insecticide	lambda-Cyhalothrin.
AZ070001	Bollgard Cotton	Bacillus thuringiensis var. kurstaki delta endotoxin protein as produced by the Cry1A(c) gene.
AZ990003	Imidan 70-WP Agricultural Insecticide	Phosmet.
CA050005	Direx 4L	Diuron.
CA050008	Courier 40SC Insect Growth Regulator	Buprofezin.
CA060005	Admire Pro Systemic Protectant	Imidacloprid.
CA070010	Talus 40 SC Insect Growth Regulator	Buprofezin.
CA860037	Furadan 4 Flowable	Carbofuran.
CA980018	Olin HTH Dry Chlorinator Granular	Calcium hypochlorite.
CO000003	Acephate 75SP	Acephate.
CO030003	Balance 4SC Herbicide	Isoxaflutole.
CO030010	Epic DF Herbicide	Flufenacet; Isoxaflutole.
CO070005	Talus 40 SC Insect Growth Regulator	Buprofezin.
CO970001	Linex 50 DF	Linuron.
CT020002	Captan 50 Wettable Powder	Captan.
DE080001	Ridomil Gold Copper	Copper hydroxide; Metalaxyl-M.
FL040012	Courier 40SC Insect Growth Regulator	Buprofezin.
FL050005	Karmex DF	Diuron.
FL070004	Provado 1.6 Flowable Insecticide	Imidacloprid.
FL860008	Decco Salt No. 19	Thiabendazole.
FL940012	Captec 4L-Captan Flowable Fungicide	Captan.
FL980005	Folicur 3.6 F Foliar Fungicide	Tebuconazole.
GA020004	Super Boll	Ethephon.
GA040001	Chlorpyrifos 4# AG	Chlorpyrifos.
GA040008	Dupont Asana XL Insecticide	Esfenvalerate.
HI960004	Ethepon 2#	Ethephon.
ID020019	Acephate 75SP	Acephate.
ID050003	Everest 70% Water Dispersible Granular Herbicide	Flucarbazone-sodium.
ID060003	Furadan LFR Insecticide/nematicide	Carbofuran.
ID080008	Endura Fungicide	Boscalid.
ID940008	Dimethoate 4E	Dimethoate.
ID960013	Aliette WDG Fungicide	Fosetyl-Al.
ID970011	Dimethoate 4E	Dimethoate.
KS030006	Direx 4L	Diuron.
KS050001	Balance Pro	Isoxaflutole.
KS050002	Epic DF Herbicide	Flufenacet; Isoxaflutole.
KS050005	Radius Herbicide	Flufenacet; Isoxaflutole.
KS090002	Balance Flexx Herbicide	Isoxaflutole.
LA020004	Direx 4L	Diuron.
LA040003	Phorate 20-G	Phorate.
LA050002	Ricestar HT Herbicide	Fenoxaprop-p-ethyl.
LA050005	Acephate 90SP	Acephate.
LA080011	Baseline Pretreat Termiticide	Bifenthrin.
LA990016	Griffin Linuron 4L Flowable Weed Killer	Linuron.
MD980002	Princep Caliber 90 Herbicide	Simazine.
ME050002	Dupont Assure II Herbicide	Quizalofop-p-ethyl.
MN000003	Axiom DF Herbicide	Flufenacet; Metribuzin.
MN000006	Dupont Assure II Herbicide	Quizalofop-p-ethyl.
MN060001	Everest 70% Water Dispersible Granular Herbicide	Flucarbazone-sodium.
MO990002	Epic	Flufenacet; Isoxaflutole.
MS010007	Glyphosate 4 Herbicide	Glyphosate-isopropylammonium.
MS020019	Acephate 90SP	Acephate.
MS070001	Chlorpyrifos 4E AG	Chlorpyrifos.
MS080002	Temprano	Abamectin.
MS110005	A15189 Herbicide	Glyphosate; Mesotrione; S-Metolachlor.
MS960007	Linex 4L	Linuron.
MT080002	Endura Fungicide	Boscalid.

TABLE 2—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION DUE TO NON-PAYMENT OF MAINTENANCE FEES—Continued

Registration No.	Product name	Chemical name
MT990005	Gustafson LSP Flowable Fungicide	Thiabendazole.
NC010003	Captan 50-WP	Captan.
NC080006	Permethrin 3.2 AG	Permethrin.
NC100002	Prime + EC	Flumetralin.
ND010012	Kumulus DF	Sulfur.
ND110006	AE 0172747 Herbicide	Tembotrione.
NM020001	Arsenal Herbicide	Imazapyr, isopropylamine salt.
NY070005	4-Poster-Tickicide	Permethrin.
NY080013	Headline Fungicide	Pyraclostrobin.
NY110001	Headline SC	Pyraclostrobin.
OH040001	Dual Magnum Herbicide	S-Metolachlor.
OH060002	Dual Magnum	S-Metolachlor.
OR040017	Axiom DF Herbicide	Flufenacet; Metribuzin.
OR040022	Hoelon 3EC Herbicide	Diclofop-methyl.
OR050027	Everest 70% Water Dispersible Granular Herbicide	Flucarbazone-sodium.
OR060017	Furadan LFR Insecticide/nematicide	Carbofuran.
OR080013	Pendant 3.3 EC	Pendimethalin.
OR080023	Rely 200 Herbicide	Glufosinate.
PA070004	Talus 40 SC Insect Growth Regulator	Buprofezin.
PA080003	Dual Magnum	S-Metolachlor.
PR020002	Mertect (R) 340-F Fungicide	Thiabendazole.
PR030001	Reglone Dessicant	Diquat dibromide.
PR890002	Ethrel Pineapple Growth Regulator	Ethephon.
SC040001	Chlorpyrifos 4# AG	Chlorpyrifos.
SC960007	Captan 50 Wettable Powder	Captan.
SC980006	Captan 50 Wettable Powder	Captan.
SD000015	Balance Pro Herbicide	Isoxaflutole.
SD040001	Define SC Herbicide	Flufenacet.
SD040005	Princep 4L	Simazine.
SD040006	Axiom DF Herbicide	Flufenacet; Metribuzin.
SD050002	Epic DF Herbicide	Flufenacet; Isoxaflutole.
SD060004	Frontier 6.0 Herbicide	Dimethenamid.
SD060008	Domain DF Herbicide	Flufenacet; Metribuzin.
TN070003	Provado 1.6 Flowable Insecticide	Imidacloprid.
TX010015	Griffin Linuron 4L Flowable Weed Killer	Linuron.
TX030008	Direx 4L	Diuron.
TX070002	Vista	Fluroxypyr 1-methylheptyl ester.
TX090005	Dupont Layby Pro Herbicide	Diuron; Linuron.
TX930021	Dimethoate 4E	Dimethoate.
UT000001	Acephate 75SP	Acephate.
UT090003	Endura Fungicide	Boscalid.
VA070001	Talus 40 SC Insect Growth Regulator	Buprofezin.
WA000014	Daconil SDG	Chlorothalonil.
WA010018	Manzate 200 DF Fungicide	Mancozeb.
WA010033	Carzol SP Miticide/insecticide In Water Soluble Packaging	Formetanate hydrochloride.
WA030023	Axiom DF Herbicide	Flufenacet; Metribuzin.
WA050006	Mycoshield	Calcium oxytetracycline.
WA050011	Mycoshield	Calcium oxytetracycline.
WA060010	Osprey Herbicide	Mesosulfuron-methyl.
WA940026	Captan 50 Wettable Powder	Captan.
WA960003	Dimethoate 4E	Dimethoate.
WA970030	Dimethoate 4E	Dimethoate.
WI020018	Acephate 75SP	Acephate.
WV070001	Provado 1.6 Flowable Insecticide	Imidacloprid.
WY080004	Endura Fungicide	Boscalid.

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1 and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
100; AZ060010; DE080001; MA070001; MD980002; MS110005; NC100002; OH040001; OH060002; PA080003; PR020002; PR030001; SD040005.	Syngenta Crop Protection, LLC, d/b/a Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–300.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA company No.	Company name and address
228	Nufarm Americas, Inc., 4020 Aerial Center Pkwy., Ste. 103, Morrisville, NC 27560.
264; AL070004; AR050002; AR050008; CA060005; CO030003; CO030010; FL980005; FL070004; ID960013; KS050001; KS050002; KS050005; KS090002; LA050002; MN000003; MO990002; MT990005; ND110006; OR040017; OR040022; OR080023; PR890002; SD000015; SD040001; SD040006; SD050002; SD060008; TN070003; WA030023; WA060010; WV070001.	Bayer Cropscience LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
352; AK020001; AL020007; AR960004; CA050005; CO970001; GA020004; GA040008; KS030006; LA990016; LA020004; ME050002; MN000006; MS960007; TX010015; TX030008; TX090005.	E. I. Du Pont De Nemours And Company (S300/419), 1007 Market Street, Wilmington, DE 19898–0001.
524; AZ070001	Monsanto Co., 1300 I Street NW., Suite 450 E., Washington, DC 20005.
527	Rochester Midland Corporation, 155 Paragon Drive, Rochester, NY 14624.
577	The Sherwin-Williams Co., Cuprinol Group/The Thompson's Co., 101 Prospect Ave., Cleveland, OH 44115–1075.
829	Southern Agricultural Insecticides, Inc., P.O. Box 218, Palmetto, FL 34220.
961	Lebanon Seaboard Corp., 1600 E. Cumberland Street, Lebanon, PA 17042.
CA980018	Arch Chemicals, Inc., 5660 New Northside Drive NW., Suite 1100, Atlanta, GA 30328.
1381; OR080013	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
1529	International Specialty Products, 1361 Alps Rd., Wayne, NJ 07470.
1677	Ecolab, Inc., 370 North Wabasha Street, St. Paul, MN 55102.
1903	Eight in One Pet Products, Inc., 3001 Commerce St., Blacksburg, VA 24060.
2517	Sergeant's Pet Care Products, Inc., 2625 South 158th Plaza, Omaha, NE 68130.
2596	The Hartz Mountain Corp., 400 Plaza Drive, Secaucus, NJ 07094.
2724	Wellmark International—d/b/a Central Life Sciences, 1501 E. Woodfield Rd., Ste. 200 W., Schaumburg, IL 60173.
3008	Osmose, Inc., 980 Ellicott St., Buffalo, NY 14209.
3090	Sanitized, Inc., 57 New Milford Tkpe., P.O. Box 2211, New Preston, CT 06777–0211.
3432	N. Jonas & Co., Inc., P.O. Box 425, Bensalem, PA 19020.
4787	Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209.
4822	S.C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403.
5204	Arkema, Inc., 900 First Avenue, King of Prussia, PA 19406–1308.
5383	Troy Chemical Corp., 8 Vreeland Road, P.O. Box 955, Florham Park, NJ 07932–4200.
5785	Great Lakes Chemical Corp., P.O. Box 2200, West Lafayette, IN 47996–2200.
6836	Lonza, Inc., 90 Boroline Rd., Allendale, NJ 07401.
7313	PPG Architectural Finishes, Inc., 4325 Rosanna Drive, Allison Park, PA 15101.
7969; ID080008; MT080002; NY080013; NY110001; SD060004; UT090003; WY080004.	BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
8622	ICL–IP America, Inc., 95 Maccorkle Ave. Southwest, South Charleston, WV 25303.
9339	Flexabar Corp., 1969 Rutgers University Blvd., Lakewood, NJ 08701.
9688	Chemsico, P.O. Box 142642, St. Louis, MO 63114–0642.
10088	Athea Laboratories, Inc., P.O. Box 240014, Milwaukee, WI 53224.
10163; AZ990003; WA010033	Gowan Co., P.O. Box 5569, Yuma, AZ 85366–8844.
35935	Nufarm Limited, 4020 Aerial Center Pkwy., Ste. 103, Morrisville, NC 27560.
40810	BASF Corp., 100 Campus Drive, Florham Park, NJ 07932.
40849	Zep Commercial Sales & Service, Agent: Connie Welch and Associates, 4196 Merchant Plaza #344, Lake Ridge, VA 22192.
42964	Airkem Professional Products, Division of Ecolab, Inc., 370 North Wabasha Street, St. Paul, MN 55102.
45309	Aqua Clear Industries, LLC, P.O. Box 2456, Suwanee, GA 30024–0980.
45385	CTX-Cenol, Inc., Agent: H.R. McLane, Inc., 7210 Red Road, Suite 206A, Miami, FL 33143.
47000	Chem-Tech, LTD., 4515 Fleur Dr., #303, Des Moines, IA 50321.
48273	Marman USA, Inc., 500 N. Westshore Blvd., Suite 405, Tampa, FL 33609.
50534; WA000014	GB Biosciences Corp., P.O. Box 18300, Greensboro, NC 27419–5458.
50600	Shepard Bros., Inc., 503 S. Cypress St., La Habra, CA 90631.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA company No.	Company name and address
51036; MS010007	BASF Sparks, LLC, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
55146; WA050006; WA050011	Nufarm Americas, Inc., 4020 Aerial Center Pkwy., Ste. 103, Morrisville, NC 27560.
58687	Georgia Gulf Chemicals & Vinyls, LLC, P.O. Box 629, Plaquemine, LA 70765–0629.
59807	OHP, Inc., Agent: Exponent, Inc., 1150 Conn. Ave. NW., Suite 1100, Washington, DC 20036.
61272	Nufarm USA, Inc., 4020 Aerial Center Pkwy., Ste. 101, Morrisville, NC 27560–8563.
61483	KMG-Bernuth, Inc., 9555 W. Sam Houston Pkwy. South, Suite 600, Houston, TX 77099.
63191	St. Gabriel Organics, LLC, d/b/a, St. Gabriel Organics, Agent: Center for Regulatory Services, 5200 Wolf Run Shoals Road, Woodbridge, VA 22192.
66330; AL020008; CO000003; CT020002; FL940012; GA040001; HI960004; ID940008; ID970011; ID020019; ID050003; LA050005; MN060001; MS020019; MS070001; NC010003; NC080006; ND010012; OR050027; SC960007; SC980006; SC040001; TX930021; UT000001; WA940026; WA960003; WA970030; WI020018.	Arysta Lifescience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
67071	THOR GMBH, Agent: THOR Specialties, Inc., 50 Waterview Dr., Shelton, CT 06484.
67262	Recreational Water Products, Inc., d/b/a Recreational Water Products, P.O. Box 1449, Buford, GA 30515–1449.
67690	Sepro Corp., 11550 N. Meridian St., Suite 600, Carmel, IN 46032.
69681	Allchem Performance Products, Inc., 6010 NW, First Place, Gainesville, FL 32607.
70385	Prorestore Products, Agent: Lewis & Harrison, LLC, 122 C Street NW., Suite 740, Washington, DC 20001.
70506; WA010018	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
71368	Nufarm Americas, Inc., 4020 Aerial Center Pkwy., Ste. 103, Morrisville, NC 27560.
85827	Green Light, A Valent U.S.A. Co., c/o Valent U.S.A. Corp., 1101 14th Street NW., Suite 1050, Washington, DC 20005.
CA050008; CA070010; CO070005; FL040012; PA070004; VA070001	Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808.
CA860037; ID060003; LA080011; OR060017	FMC Corp., Agricultural Products Group, Attn: Michael C. Zucker, 1735 Market St., Rm. 1978, Philadelphia, PA 19103.
CO020008	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
FL040012	Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808.
FL050005	Griffin, LLC, P.O. Box 1847, Valdosta, GA 31603–1847.
FL860008	Decco US Post-Harvest, Inc., 1713 South California Ave., Monrovia, CA 91016–0120.
LA040003	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
MS080002	Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209.
NM020001	BASF Corp., P.O. Box 13528, Research Triangle Park, NC 27709–3528.
NY070005	Y-Tex Corp., P.O. Box 1450, Cody, WY 82414–1450.
PR110003	Argo Servicios, Inc., P.O. Box 360393, San Juan, PR 00936–0393.
TX070002	Dow Agrosciences, LLC, 9330 Zionsville Rd. 308/2A, Indianapolis, IN 46268–1054.
WA030004	Champion Technologies, 3200 Southwest Freeway, Suite 2700, Houston, TX 77027.
WA030014	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 92660–1706.
WA910013	Loveland Products, Inc., P.O. Box 1286; Greeley, CO 80632–1286.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register.**

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 3 of Unit II. have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Upon cancellation of the products identified in Tables 1 and 2 of Unit II., the Agency will allow existing stocks provisions as follows:

A. Registrations Listed in Table I of Unit II

The Agency anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

B. Registrations Listed in Table 2 of Unit II, Except Nos. CA860037, ID060003, OR060017

The effective date of cancellation will be the date of the cancellation order. The Agency anticipates allowing registrants to sell and distribute existing stocks of these products until January 13, 2013, 1 year after the date on which the maintenance fee was due. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 2 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

C. Reg. Nos. CA860037, ID060003, OR060017

The effective date of cancellation of these products is the date of publication of the cancellation order in the **Federal Register**. EPA does not intend to allow the continued sale and distribution of existing stocks of these products after the effective date of this cancellation. There are currently no tolerances in effect for any of the food or feed crops associated with the domestic use of carbofuran products, and there have been none since the 2009 tolerance revocations took effect on December 31, 2009, (May 15, 2009, 74 FR 23046) (FRL–8413–3).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 25, 2023.

Michael Goodis,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–16448 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0383; FRL–9352–1]

Registration Review; Pesticide Dockets Opened for Review and Comment and Other Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document announces the availability of an amended final work plan for the registration review of the pesticide thifensulfuron methyl; this work plan has been amended to incorporate revisions to the data requirements. EPA is also announcing that the docket opening for the pesticide phosphine was postponed until the fourth quarter of fiscal year 2013 to open in conjunction with other pesticides in the fumigant chemical class. Also, EPA is announcing the termination of the registration review case for the pesticide tanol derivatives (furanones). The Agency concluded that at concentrations below 0.1%, the tanol derivatives do not function as pesticidal active ingredients. As a result, the furanones were redesignated from active ingredients to inert ingredients in the remaining two product labels which contain furanones. Based on the redesignation of the tanol derivatives, and the absence of any currently registered pesticides with the furanones as an active ingredient, the Agency has concluded the registration review of case 3138.

DATES: Comments must be received on or before August 19, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0383 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; email address: *costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the Agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and No.	Docket ID No.	Chemical review manager, telephone number, email address
Butralin, 2075	EPA–HQ–OPP–2011–0720	Christina Scheltema, (703) 308–2201, *scheltema.christina@epa.gov.*
Trifluralin, 0179	EPA–HQ–OPP–2012–0417	Kelly Ballard, (703) 305–8126, *ballard.kelly@epa.gov.*
MGK-264, 2430	EPA–HQ–OPP–2012–0415	Katherine St. Clair, (703) 347–8778, *stclair.katherine@epa.gov.*
Prallethrin, 7418	EPA–HQ–OPP–2011–1009	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov.*
Resmethrin, 0421	EPA–HQ–OPP–2012–0414	Katherine St. Clair, (703) 347–8778, *stclair.katherine@epa.gov.*
Flazasulfuron, 7271	EPA–HQ–OPP–2011–0994	Khue Nguyen, (703) 347–0248, *nguyen.khue@epa.gov.*
Nicosulfuron, 7227	EPA–HQ–OPP–2012–0372	Andrea Mojica, (703) 308–0122, *mojica.andrea@epa.gov.*
Prosulfuron, 7235	EPA–HQ–OPP–2011–1010	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov.*
Bromacil, 0041	EPA–HQ–OPP–2012–0445	Steven Snyderman, (703) 347–0249, *snyderman.steven@epa.gov.*
Buprofazin, 7462	EPA–HQ–OPP–2012–0373	James Parker, (703) 306–0469, *parker.james@epa.gov.*
Dichlobenil, 0263	EPA–HQ–OPP–2012–0395	Eric Miederhoff, (703) 347–8028, *miederhoff.eric@epa.gov.*

TABLE—REGISTRATION REVIEW DOCKETS OPENING—Continued

Registration review case name and No.	Docket ID No.	Chemical review manager, telephone number, email address
Diflufenzopyr, 7246	EPA–HQ–OPP–2011–0911	Julia Stokes, (703) 347–8966, *stokes.julia@epa.gov.*
Aldicarb, 0140	EPA–HQ–OPP–2012–0161	Susan Bartow, (703) 603–0065, *bartow.susan@epa.gov.*
Nabam, 0641	EPA–HQ–OPP–2012–0339	Wanda Henson, (703) 308–6345, *henson.wanda@epa.gov.*
Poly(hexamethylenebiguanide, 3122.	EPA–HQ–OPP–2012–0341	Rebecca von dem Hagen, (703) 305–6785, *vondem-hagen.rebecca@epa.gov.*
Aliphatic alcohols, C1–C5, 4003	EPA–HQ–OPP–2012–0340	Wanda Henson, (703) 308–6345, *henson.wanda@epa.gov.*
Dibromodicyanobutane, 2780	EPA–HQ–OPP–2012–0342	Seiichi Murasaki, (703) 347–0163, *murasaki.seiichi@epa.gov.*
Nanosilver, 5042	EPA–HQ–OPP–2011–0370	Wanda Henson, (703) 308–6345, *henson.wanda@epa.gov.*
Bicarbonates, 4048	EPA–HQ–OPP–2012–0407	Cheryl Greene, (703) 308–0352, *greene.cheryl@epa.gov.*
Straight-Chain Lepidopteran Pheromones (SCLPs), 8200.	EPA–HQ–OPP–2012–0127	Colin Walsh, (703) 308–0298, *walsh.colin@epa.gov.*
Paecilomyces, 6047	EPA–HQ–OPP–2012–0403	Ann Sibold, (703) 305–6502, *sibold.ann@epa.gov.*
Potato replicase, 6505	EPA–HQ–OPP–2012–0416	Joel Gagliardi, (703) 308–8116, *gagliardi.joel@epa.gov.*
Pseudomonas aureofaciens, 6009	EPA–HQ–OPP–2012–0421	Susanne Cerrelli, (703) 308–8077, *cerrelli.susanne@epa.gov.*

EPA is also announcing the availability of the amended final work plan for the registration review of the pesticide thifensulfuron methyl (docket EPA–HQ–OPP–2011–0171). This final work plan has been amended to incorporate changes to data requirements for registration review. EPA is announcing that the docket opening for the pesticide phosphine was postponed until the fourth quarter of fiscal year 2013 to open in conjunction with other pesticides in the fumigant chemical class.

Also, EPA is announcing the termination of the registration review case for the pesticide tanol derivatives (furanones). The furanones initiated registration review in September 2011 and received no comments during the 60 day comment period. Prior to and during the initiation of the furanones registration review case 3138, the Agency investigated the role and status of the furanones, which were only found in two products co-formulated with d-limonene. Based on the evaluation of data on the furanones' use as fragrance components in nonfood use pesticide product formulations (as part of the Fragrance Pilot Program), the Agency concluded that at concentrations below 0.1%, the tanol derivatives in combination with d-limonene do not function as pesticidal active ingredients. As a result, the furanones were redesignated from active ingredients to inert ingredients on the remaining two product labels. Based on the redesignation of the tanol derivatives, and the absence of any currently registered pesticides with the furanones as an active ingredient, the Agency has concluded the registration review of case 3138. The furanone registration review case termination is available in the registration review docket, EPA–HQ–OPP–2011–0682. For additional information, contact James Parker by email: *parker.james@epa.gov* or phone (703) 306–0469.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 18, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–16328 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday July 10, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram. Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–16650 Filed 7–3–12; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–13]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—250 E Street SW., Room 8C, Washington, DC 20219.

Date: July 11, 2012.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered

June 13, 2012 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: July 2, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–16560 Filed 7–5–12; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–12]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—250 E Street SW., Room 8C, Washington, DC 20219.

Date: July 11, 2012.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered

Summary Agenda

June 13, 2012 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Foundation March 2012 Grant Reimbursement Request.

ASC Appraisal Foundation Grant Policy.

How To Attend and Observe an ASC Meeting

Email your name, organization and contact information to *meetings@asc.gov*. You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste. 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: July 2, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–16563 Filed 7–5–12; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before September 4, 2012.

ADDRESSES: You may submit comments, identified by *FR Y–14A/Q/M*, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision of the Following Report

Report title: Capital Assessments and Stress Testing information collection.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Frequency: Annually, Quarterly, and Monthly.

Reporters: Large banking organizations that meet an annual threshold of $50 billion or more in total consolidated assets (large Bank Holding Companies or large BHCs), as defined by the Capital Plan rule (12 CFR 225.8).[1]

Estimated annual reporting hours: FR Y–14A: Summary, 25,080 hours; Macro scenario, 930 hours; Counterparty credit risk (CCR), 2,292 hours; Basel III/Dodd-Frank, 600 hours; and Regulatory capital, 600 hours. FR Y–14 Q: Securities risk, 1,200 hours; Retail risk, 1,920 hours; Pre-provision net revenue (PPNR), 75,000 hours; Wholesale corporate loans, 6,720 hours; Wholesale commercial real estate (CRE) loans, 6,480 hours; Trading risk, 41,280 hours; Basel III/Dodd-Frank, 1,800 hours; Regulatory capital, 3,600 hours; and Operational risk, 3,360 hours; and Mortgage Servicing Rights (MSR) Valuation, 864 hours; Supplemental, 960 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,216 hours. FR Y–14M: Retail 1st lien mortgage, 129,000 hours; Retail home equity, 123,840 hours; and Retail credit card, 77,400 hours. FR Y–14 Implementation and On-Going Automation: Start-up for new respondents, 79,200 hours; and On-going revisions for existing respondents, 9,120 hours.

Estimated average hours per response: FR Y–14A: Summary, 836 hours; Macro scenario, 31 hours; CCR, 382 hours; Basel III/Dodd-Frank, 20 hours; and Regulatory capital, 20 hours. FR Y–14Q: Securities risk, 10 hours; Retail risk, 16 hours; PPNR, 625 hours; Wholesale corporate loans, 60 hours; Wholesale CRE loans, 60 hours; Trading risk, 1,720 hours; Basel III/Dodd-Frank, 20 hours; Regulatory capital, 40 hours; Operational risk, 28 hours, MSR Valuation, 24 hours; Supplemental, 8 hours; and Retail FVO/HFS, 16 hours. FR Y–14M: Retail 1st lien mortgage, 430 hours; Retail home equity, 430 hours; and Retail credit card, 430 hours. FR Y–14 Implementation and On-Going Automation: Start-up for new respondents, 7,200 hours; and On-going revisions for existing respondents, 480 hours.

Number of respondents: 30.

General description of report: The FR Y–14 series of reports are authorized by section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which requires the Federal Reserve to ensure that certain BHCs and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under FOIA exemption

[1] The Capital Plan rule applies to every top-tier large BHC. This asset threshold is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain BHCs.

4 (5 U.S.C. 552(b)(4)). Such exemptions would be made on a case-by-case basis.

Abstract: The data collected through the FR Y–14A/Q/M provides the Federal Reserve with the additional information and perspective needed to help ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including (1) continuous monitoring of BHCs' planning and management of liquidity and funding resources, and (2) regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed. Respondent BHCs are required to complete and submit up to 17 filings each year: one annual FR Y–14A filing, four quarterly FR Y–14Q filings, and 12 monthly FR Y–14M filings. Compliance with these information collections is mandatory.

The annual FR Y–14A collects large BHCs' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[2] The quarterly FR Y–14Q collects granular data on BHCs' various asset classes and PPNR for the reporting period, which are used to support supervisory stress test models and for continuous monitoring efforts.[3] The monthly FR Y–14M comprises three loan- and portfolio-level collections, and one detailed address matching collection to supplement the two loan-level collections.

Under section 165 of the Dodd-Frank Act, the Federal Reserve is required to issue regulations relating to stress testing (DFAST) for certain BHCs and nonbank financial companies supervised by the Board. On January 5, 2012, the Board published rulemakings (77 FR 594) which would include new reporting requirements found in 12 CFR 252.134(a), 252.146(a), and 252.146(b) related to stress testing. The Federal Reserve anticipates that these new reporting requirements and the PRA burden associated with these requirements would be addressed in detail in a future FR Y–14 proposal.[4]

Current actions: The Federal Reserve proposes revising various annual and quarterly FR Y–14 schedules and several general revisions to the entire collection, effective September 30, 2012. The revisions would include: (1) Implementing three new quarterly reporting schedules, (2) revising the respondent panel, (3) enhancing data items previously collected, (4) deleting data items that are no longer needed, (5) adding attestation requirements, and (6) collecting contact information. The Federal Reserve proposes the revisions based on experience gained from previous capital review and stress testing efforts. The revisions would provide the Federal Reserve with new information to refine its analysis, while removing data items that are no longer deemed necessary for such analysis. A summary of the proposed revisions is provided below.

The proposed revisions to the FR Y–14A (annual collection) include: (1) Revising 10 of the worksheets to the Summary schedule and combining the *Retail Balance Projections* and *Retail Loss Projections worksheets;* (2) adding two new worksheets and refining the *Planned Action worksheet* for the Basel III/Dodd-Frank schedule and making definitional and calculation revisions consistent with the final Market Risk Capital rulemaking; [5] (3) streamlining the Regulatory Capital Instruments schedule and adding CUSIP-level [6] data; and (4) revising the CCR schedule to collect additional data.

The proposed revisions to the FR Y–14Q (quarterly collection) include: (1) Implementing a new MSR Valuation schedule; (2) implementing a new Supplemental schedule; (3) implementing a new Retail FVO/HFS schedule; (4) revising the Retail Risk schedule to remove data items no longer needed and add risk characteristics to existing collections; (5) revising various worksheets and adding a new worksheet in the Trading Risk schedule; (6) revising the PPNR schedule; (7) adding new worksheets and data items to the Basel III/Dodd-Frank schedule and making definitional and calculation revisions consistent with the final Market Risk Capital rulemaking; and (8) incorporating minor revisions and other clarifications to Securities and Regulatory Capital Instruments schedules.

The proposed revisions to the collection of PPNR data in the FR Y–14A worksheets (contained within the Summary schedule) and FR Y–14Q schedule include: (1) Expanding the data collection on non-interest income and expense and (2) collecting on a one-time basis, historical data for proposed data items and inclusion of one-time items in PPNR on the *PPNR Submission worksheet, the PPNR Net Interest Income (NII) worksheet,* and *the PPNR Metrics worksheet.*

The proposed revisions to the FR Y–14A, Q, and M include: (1) Revising the respondent panel to be more consistent with the scope of application in the notice of proposed rulemaking regarding enhanced prudential standards (77 FR 594); (2) adding an attestation to the FR Y–14 submission that must be signed by the Chief Financial Officer (CFO) of the BHC (or by the individual performing this equivalent function); and (3) collecting contact information for each reported schedule.

Draft files illustrating the proposed new schedules and instructions, and the proposed revisions to the current reporting schedules and instructions are available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm.*

[2] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[3] BHCs are required to submit both quarterly and annual schedules for third quarter data, with the exception of the Basel III/Dodd-Frank and Regulatory Capital Instruments schedules. For these schedules, only data for the annual schedules are submitted for third quarter data.

[4] The proposed rules would implement the enhanced prudential standards required to be established under section 165 of the Dodd-Frank Act and the early remediation framework established under section 166 of the Act. The enhanced standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management, single-counterparty credit limits, DFAST requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability. The 2011 proposal implementing the FR Y–14A and Q acknowledged the impending publication of the DFAST reporting requirements under section 165 of the Dodd-Frank Act. That proposal included a statement noting that revisions to the quarterly and annual data collections, based on the enhanced standards rulemaking, would be incorporated into the FR Y–14A and Q information collection.

[5] On June 12, 2012, the Federal Reserve Board, Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) published a joint press release announcing the finalization of the Market Risk Capital rulemaking that was proposed in 2011. Attached to the press release is a copy of the signed, pre-published version of this final rulemaking.

[6] CUSIP refers to the Committee on Uniform Security Identification Procedures. This 9-character alphanumeric code identifies any North American security for the purposes of facilitating clearing and settlement of trades.

Proposed Revisions to the FR Y–14A (Annual Collection) Summary Schedule

The Federal Reserve proposes revising several worksheets included in the Summary schedule: *Income Statement, Balance Sheet, ASC 310–30, Retail Balance and Loss Projections, Retail Repurchase, Trading Risk, CCR, and PPNR*[7] *worksheets.* The proposed revisions to these worksheets are necessary for the Federal Reserve to better understand the characteristics underlying the risks to which BHCs are exposed.

Income Statement worksheet. The Federal Reserve proposes revising this worksheet to expand the definitions of several loan categories (such as, certain domestic and international real estate and CRE loans, international Commercial and Industrial (C&I) loans, credit card and other consumer loans). The Federal Reserve proposes changing the definitions of certain loan categories from their FR Y–9C definitions in order to better align the categories with Federal Reserve stress testing methods (for example, certain types of credit cards may be included in more than one data item on the FR Y–9C but should be consolidated on the FR Y–14A). For three sections of the worksheet (Accrual Loan Losses, Losses Associated with HFS and Loans Associated for Under the FVO, and ALLL), the Federal Reserve proposes splitting real estate loans by loans originated in domestic and foreign offices. The Federal Reserve also proposes separating accrual loans from HFS loans or held under the FVO to distinguish between the different risk characteristics of the loans booked under these accounting standards.

The Federal Reserve proposes a new data item, Other CCR Losses, under the Trading Account section on the *Income Statement worksheet* to allow BHCs to include losses due to counterparty risk that are not directly included in the other types of loss categories available. A breakout under Other Losses on the *Income Statement worksheet* would include Goodwill Impairment, Valuation Adjustments for the BHCs' own debt under a FVO, and Other Losses. This breakout would give BHCs greater flexibility to distinguish between these types of loss, which have very different implications when assessing the BHCs' underlying risk.

The Federal Reserve also proposes adding to the *Income Statement worksheet* more granular breakouts by loan category of the ALLL and loan-loss provisions. These breakouts would give greater insight into BHCs' reserving policies and provide clarity as to how losses in the banking book move through the income statement to affect capital. The data items requested would closely mirror the loan categories reported on the balance sheet. However, in an effort to reduce burden, only an aggregate figure would be reported for first lien mortgages; residential mortgages, CRE, and farmland not in domestic offices; credit card; other consumer; and other loans in the ALLL and loan-loss provisions section.

Balance Sheet worksheet. The Federal Reserve proposes revising the loan categories in this worksheet to mirror the new categories on the *Income Statement worksheet.* The Premises and Fixed Assets section of the *Balance Sheet worksheet* would be revised to add a new subcomponent, Collateral underlying leases for which the bank is the lessor. Adding this data item would allow the Federal Reserve to track which BHCs have material exposure to operating leases as this asset type is not broken out separately on the FR Y–9C.

ASC 310–30 worksheet. The Federal Reserve proposes significantly revising this worksheet, which collects data on purchased credit impaired loans. The worksheet would collect data separately for three portfolios (first lien mortgages, second lien home equity loans, and home equity lines of credit), as well as any other portfolios subject to ASC 310–30 accounting, whether they are currently on BHCs' portfolios or are expected to be acquired. The current worksheet collects aggregate figures for all ASC 310–30 assets. These data items would be revised in an effort to better align with accounting definitions for the loans reported in the purchased credit impaired portfolio. The revised worksheet would collect the carrying value, allowance, provisions to and charge-offs from the allowance, estimates of cash flows to be collected over the life of the loan, the nonaccretable difference and its components, changes to the nonaccretable difference, and the accretable yield and its components. Collecting this more detailed information would improve the Federal Reserve's ability to track the effect of the stress scenario on ASC 310–30 portfolios.

Retail Balance and Loss Projections worksheets. In an effort to streamline the schedule, the Federal Reserve proposes combining these two worksheets. The combined worksheets would include a new data item to capture loan losses, which had previously been captured only on the *Income Statement worksheet.* The new data item would be reported only once on either the *Income Statement worksheet* or the newly combined worksheet, and the data would be automatically populated in the second worksheet.

Retail Repurchase worksheet. The Federal Reserve proposes revising this worksheet to collect more granular data on the categories of repurchase exposure. Collecting this level of data would improve the Federal Reserve's ability to more precisely assess repurchase risk exposure. The revisions would separate portfolios sold to Fannie Mae and Freddie Mac, as well as add a category for loans insured by the US government (e.g. the Federal Housing Administration (FHA)/the U.S. Department of Veterans Administration (VA) loans). The revisions would separate portfolios securitized with and without monoline insurance.[8] For all of the portfolio categories, the worksheet would collect separately information on loans for which a BHC is and is not able to report delinquency information.

Trading Risk worksheet. For each of the eight risk categories for which BHCs report Profit/Loss (P/L) data, the Federal Reserve proposes adding new data items to this worksheet to capture and conduct analysis on the contribution of higher-order risks (inter-asset risks attributable to terms not represented in the FR–Y14Q Trading Risk schedule) and Counterparty Valuation Adjustment (CVA)[9] hedges to the BHCs' exposure to trading risk.

CCR worksheet. The Federal Reserve proposes revising this worksheet to breakout Counterparty Credit mark-to-market Losses (CVA losses) into Counterparty CVA losses and Offline Reserve CVA Losses. This breakout would give the Federal Reserve additional insight into the decomposition of CVA losses, which may vary across institutions.

Basel III/Dodd-Frank Schedule

The Federal Reserve proposes adding a new *Balance Sheet worksheet* to the Basel III/Dodd-Frank schedule to collect supplemental balance sheet data for BHCs' banking and trading books to better assess the impact and trends relative to changes in Risk-Weighted Assets (RWA) and implications resulting from planned actions. For BHCs that are not among the 19 SCAP

[7] The discussion of the revisions to the annual PPNR worksheets (contained in the Summary schedule) and the quarterly PPNR Schedule is listed below.

[8] Monoline insurance is a type of insurance for loans and bonds to cover the interest and principal when an issuer defaults.

[9] CVA is the difference between the risk-free portfolio value and the true portfolio value that takes into account the possibility of default by a counterparty. In other words, CVA is the market value of counterparty credit risk.

BHCs [10] and are not mandatory Basel II or opt-in Basel II respondents, the Federal Reserve proposes adding a new simplified *Risk-Weighted Assets (B) worksheet* that the BHCs would be permitted to use at their option. This worksheet would exclude data items that are not relevant to the respondents.

On the *Capital Composition worksheet* the Federal Reserve proposes collecting additional earnings data for the entire forecast period (eight years of fourth quarter projections) in order to facilitate future earnings analysis. Under Periodic Changes in Common Stock, Common Stock and Related Surplus (Net of Treasury Stock), the Federal Reserve proposes collecting two new data items (issuance of common stock, including conversion to common stock; and repurchases of common stock). Under Periodic Changes in Retained Earnings, the Federal Reserve proposes collecting three new data items (net income/loss attributable to bank holding company, cash dividends declared on preferred stock, and cash dividends declared on common stock). Additionally, the Federal Reserve proposes adding two data items, RWA type and Balance Sheet Impact, to the *Planned Action worksheet* to better capture the type of exposure that the action would have on a BHCs' risk-weighted assets. The Federal Reserve also proposes requiring BHCs to submit additional supporting documentation on the anticipated market size for the capital action, planned unwinds and run-offs of balance sheet positions, hedging strategies, risk-weighted calculation methodologies, and use of clearing houses.

Regulatory Capital Instruments Schedule

The Federal Reserve proposes streamlining the Regulatory Capital schedule to simplify the data collection by replacing five issuances and redemptions worksheets with the new *Projected Actions and Balances worksheet*. For all forecasted periods (reported on the new worksheet), the Federal Reserve proposes collecting only instrument-type data, rather than regulatory capital instrument data at the CUSIP-level. For all current periods (reported on the new worksheet), the Federal Reserve proposes collecting CUSIP-level data for actual issuances and actual redemptions. This streamlining would reduce burden on BHCs and alleviate some of the difficulties BHCs had in projecting the specific CUSIP-level capital instruments they had planned to redeem. The streamlining would also enhance both the quality and accuracy of the ongoing monitoring and assessments of BHCs' capital structure.

CCR Schedule

The Federal Reserve proposes revising the CCR schedule to improve the ability to monitor counterparty risk and perform stress-testing. The revised schedule would collect more information on single name credit default swaps whose purpose is to hedge the default of the counterparty. This information would enable the Federal Reserve to estimate the effect of specific hedges on CVA losses under a variety of stress scenarios. In addition, the CCR schedule would collect data on the Loss Given Default (LGD) of a counterparty default [11] to allow the Federal Reserve to independently estimate a CVA. An additional column for the sensitivity to a 300 basis point shock to counterparties' credit spreads would be added to improve the ability to analyze counterparty risk under large risk factor shocks. The Federal Reserve proposes collecting country identifiers for the counterparty and data regarding whether counterparties included downgrade triggers in collateral arrangements. These additional data would provide the Federal Reserve the flexibility needed to develop independent loss estimates. The Federal Reserve also proposes to clarify the instructions related to how BHCs should document their internal data generation and modeling used to complete the CCR schedule.

Proposed Revisions to FR Y–14Q (Quarterly Collection) MSR Valuation Schedule

The Federal Reserve proposes implementing the new quarterly MSR Valuation schedule that would collect information on the data that BHCs use to value their MSRs and the sensitivities of those valuations to changes in economic factors. Data items collected would include the book and market value of MSRs, the number and dollar value of loans serviced, capitalization rates by product type, valuation methodology data (such as the type of valuation models used), valuation sensitivity items (such as the sensitivity of valuations to changes in interest rates and macroeconomic variables), and valuations metrics on servicing portfolios (such as the discount rate used, the option-adjusted spread, prepayment and default rates, and servicing costs). This proposed schedule would enhance the ability to monitor and stress-test MSR valuations, which tend to be volatile and sensitive to macroeconomic shocks.

To minimize burden on the BHCs, the Federal Reserve proposes implementing a materiality threshold for determining whether a BHC would be required to report. BHCs would be required to complete the MSR Valuation schedule if they meet either of the following materiality thresholds: (1) The average fair market value of MSRs is greater than five percent of the firm's average Tier 1 capital during the last four quarters or (2) the unpaid principal balance of loans under contract for servicing for which an MSR value is calculated greater than $100 billion. This schedule would have different materiality thresholds than the other schedules subject to a threshold. The first threshold would be similar to the materiality thresholds for other schedules in that BHCs must complete the schedule if the average fair market value of MSRs divided by average Tier 1 capital during the last four quarters is greater than five percent. The second threshold would not be based on the value of the MSR itself; instead it would be based on the unpaid principal balance of the loans serviced under the MSR contract. This approach was taken because MSR valuations tend to be quite volatile and BHCs with high levels of servicing exposure may report low levels of MSR valuation for several quarters. The balance of the serviced loans better captures the BHCs' exposure to and dependence on mortgage servicing income.

Supplemental Schedule

Currently, the Federal Reserve collects data on BHCs' exposures at different levels of granularity on different reporting forms. For example, the FR Y–9C collects aggregate exposure information, while the FR Y–14 collects more granular data on the risk dimensions to which BHCs are exposed. The Federal Reserve proposes implementing the quarterly Supplemental schedule to ensure that the Federal Reserve has a consistent view of BHCs' exposures that are collected at different levels of granularity. The proposed schedule would collect information or breakouts of data omitted from the more granular FR Y–14Q/M schedules, such as balances of non-purpose securities-based loans, or balances of loans in immaterial portfolios to allow the Federal Reserve to identify factors contributing to the gaps between the FR Y–9C aggregate data and the data

[10] These 19 BHCs participated in both the 2009 Supervisory Capital Assessment Program (SCAP) and the 2011 and 2012 CCAR exercises.

[11] This is the LGD of counterparties to the BHCs that are used in the BHCs' CVA calculations.

collected in the FR Y–14. The Federal Reserve proposes this aggregate-level schedule because the burden on the institutions for reporting the data at the granular segment- and loan-level outweighs the value of the data to the Federal Reserve. The proposed schedule would allow the Federal Reserve to understand the variation of such factors across institutions and over time, and also enable the Federal Reserve to remain abreast of BHCs' changing exposures to portfolios not currently captured in the FR Y–14. Lastly, collecting this supplemental data would provide more precise stress test measures.

Retail FVO/HFS Schedule

The Federal Reserve proposes implementing the quarterly Retail FVO/HFS Schedule that would collect specific information on loans that are accounted for under the FVO or HFS. The schedule would collect the value of loans segmented by various criteria, including the type of loan (residential loans in forward contract, residential loans repurchased with FHA/VA insurance,[12] other residential loans, non-residential loans in forward contract, student loans not in forward contract, credit card loans not in forward contract, and auto loans not in forward contract), and the origination vintage. These data are necessary for the Federal Reserve to model losses on the FVO/HFS loans. Loans that are under a forward contract for sale have much lower price volatility than those loans that are not under a forward contract. Vintage data are important because the age of the loan and the conditions under which the loan was originated affect its vulnerability to macroeconomic shocks. The carrying values of the FVO/HFS loans are not available elsewhere because BHCs typically calculate the carrying value on pools of loans and not at the loan-level.

In an effort to reduce burden on respondents, the Federal Reserve also proposes making this schedule subject to the following materiality threshold: Material portfolios are defined as those with asset balances greater than $5 billion or asset balances relative to Tier 1 capital greater than 5 percent on average for the four quarters that precede the reporting quarter.

[12] Mortgage insurance is a policy that protects lenders against losses that result from default on a home mortgage. The FHA and the VA loan programs are the equivalent of private mortgage insurance required for certain conventional home loans.

Retail Risk Schedule

The Federal Reserve proposes incorporating three types of revisions to the quarterly Retail Risk schedule. First, the Federal Reserve proposes adding a number of additional risk characteristics to the existing collections. These revisions would give more direct insight into some potential emerging risk dimensions that were previously captured latently through other variables. Second, the Federal Reserve proposes making enhancements to the schedules to improve the consistency across the retail schedules. These enhancements would allow the Federal Reserve to have a more consistent view of BHCs' risk profiles across portfolios, such as adding a gross charge-off summary variable to the *Domestic Other Consumer* collection. Third, the Federal Reserve proposes incorporating editorial changes across the portfolio descriptions.

The Federal Reserve proposes making specific revisions to the following portfolio collections in the Retail Risk schedule:

- To the *Domestic Student Loan* portfolio, adding a segment variable to capture the level of education being pursued by the borrower;
- To the *Domestic Other Consumer* and *International Other Consumer* portfolio, deleting the line of credit and loan size segment variables as similar information can be derived from a combination of data items reported elsewhere on the schedule, and adding data items to capture gross charge-offs, bankruptcy charge-offs, and recoveries on loans and making this collection consistent with the other collections within the Retail Risk schedule, thereby enhancing the Federal Reserves' ability to do cross-portfolio analysis;
- To the *Domestic and International Small Business* portfolio, expanding the Product Type segment to separate lines of credit from term loans (these product types exhibit different risk characteristics which may not be completely captured by the existing set of segment and summary variables) and adding a segment variable to capture whether the loans are collateralized;
- To the *International Credit Card* portfolio, expanding the Product Type segment to separate bank cards from charge cards (these product types exhibit different risk characteristics which may not be completely captured by the existing set of segment and summary variables);
- To the *International Auto* portfolio, adding a geography segment to make the collection consistent with the geography information collected in the other international collections in the Retail Risk schedule, and requesting the one-time collection of the *International Auto* historical data (January 2007 to present) in order to better capture how the geographic dimension of the risk distribution contributed to portfolio risk during that period; and
- To all portfolios that collect the Vintage segment variable, converting the Vintage segment variable to an Age segment variable in order to remove specific date dependencies from the reporting requirements, which would make the ongoing maintenance of the reporting documents and the reporting of the data less burdensome.

Trading Risk Schedule

The Federal Reserve proposes deleting the *Top-Ten Equity List worksheet, Top-Ten Sovereign Credit worksheet,* and *Alternative Equity by Geography Input worksheet* from the schedule because they are no longer necessary for the calculation of the trading loss estimate.

The Federal Reserve proposes adding data items to capture long versus short market value/notional exposures, missing product types, and more granular credit rating information to allow the Federal Reserve to better differentiate across different products. In addition, the Federal Reserve proposes adding term structure (floating) flexibility in the *Commodities worksheet* and revising the *Spot/Volatility Grid worksheet* to increase coverage of products including emissions and diversified commodity indices.

In order to improve the effectiveness of the P/L grids,[13] the Federal Reserve proposes clarifying current guidance to request wider and denser P/L grids as well as expanding the rates worksheets to include P/L grids by product level. The proposed revisions would take into account historical price movements observed under adverse market conditions and are meant to increase the effectiveness of interpolation from the P/L grids.

The Federal Reserve proposes clarifying the instructions to address: implementing the P/L calculations to generate P/L sensitivity data in the *Equity worksheet* and *FX worksheet,* clarifying ambiguities related to decomposition and placement of various trading assets within the *Securitized Products worksheet* and

[13] P/L grids express the amount that firms gain or lose based on the movements of a predefined set of fundamental risk factors such as interest rates or credit spreads. They are used to model the expected P/L firms will experience under a prescribed market scenario.

Commodities worksheet of the Trading Risk schedule, and missing items such as countries and update geographic groupings.

Basel III/Dodd-Frank Schedule

The Federal Reserve proposes adding a new worksheet, *MonitoringInstr*, to collect more detailed data on a quarterly basis for ongoing monitoring and analysis to avoid unnecessary ad-hoc, follow-up requests with the BHCs during the regular quarterly monitoring process. The Federal Reserve also proposes adding a new *Balance Sheet worksheet* to collect projections of 14 balance sheet items (held to maturity (HTM) securities; available for sale (AFS) securities; loans and leases (held for investment and HFS) net of unearned income and ALLL; trading assets; total intangible assets; other assets; total assets; total RWA; deposits; trading liabilities; subordinated notes payable to unconsolidated trusts issuing trust preferred securities (TruPS) and TruPS issued by consolidated special purpose entities; other liabilities; total liabilities; and total equity capital) through 2019. Insight into the BHCs' projected path for these categories of asset balances would enable the Federal Reserve to better assess the feasibility of plans for adhering to Basel III requirements. For BHCs that are not among the 19 SCAP BHCs and are not mandatory Basel II or opt-in Basel II respondents, the Federal Reserve proposes adding a new simplified *Risk-Weighted Assets (B) worksheet* that the BHCs would be permitted to use at their option. This worksheet would exclude data items that are not relevant to the respondents.

The Federal Reserve proposes adding data items to the quarterly Basel III/Dodd-Frank schedule in order to make the schedule consistent with the annual Basel III/Dodd-Frank schedule. The new data items would include: adding periodic charges in common stock and retained earnings under the *Capital Composition worksheet;* changing the list of action types, exposure types, and RWA types under *Planned Action worksheet;* and adding more data items to verify the consistency of data within the Basel III/Dodd-Frank schedule and in comparison to the FR Y–14A Summary schedule. The latter would also provide additional clarification to Basel III-related data collected on the annual and quarterly schedules.

Securities Risk Schedule

The Federal Reserve proposes revising the Securities schedule to allow BHCs to report an international securities identification number (ISIN) [14] and identify it as such, when a security does not have a CUSIP number. Also, the Federal Reserve proposes combining the domestic and foreign corporate bond categories. In an effort to reduce burden, the reporting of previously optional fields (purchase date, purchase price, and purchase yield) have been eliminated.

Proposed Revisions to the FR Y–14A/Q

PPNR Worksheets (Annual Collection) and PPNR Schedule (Quarterly Collection)

The FR Y–14 collects PPNR data on an annual and quarterly basis. The annual worksheets (contained in the Summary schedule) collect projection information and the quarterly schedule monitors actual PPNR data. The Federal Reserve proposes revising the three *PPNR worksheets* (*PPNR Projections, PPNR NII,* and *PPNR Metrics*) and the quarterly PPNR schedule based on industry feedback and the Federal Reserve's experience analyzing these data thus far.

Currently, only BHCs with deposits comprising at least one-third of total liabilities for any reported period are required to report data on the *PPNR NII worksheet.* The Federal Reserve proposes reducing the threshold for reporting to one-quarter of total liabilities because the Federal Reserve believes that the current threshold does not capture all the BHCs for which it needs to conduct an in-depth net interest income assessment. Furthermore, while the Federal Reserve originally sought to reduce burden on the industry, the agency proposes making all data items on the *PPNR Projections worksheet* and the *PPNR NII worksheet* required (removing the optional reporting status for certain data items). As with the revision to the reporting threshold, these data are needed to better analyze net interest income. Currently, BHCs can choose "Primary" and "Supplementary" worksheets with reduced reporting requirements on the "Supplementary" worksheet.

In an effort to better understand the core drivers of BHCs revenues and expenses, the Federal Reserve proposes revising certain PPNR data items, including: (1) The exclusion of one-time income and expense items would be eliminated, in order to ensure a more consistent definition of PPNR among BHCs and (2) the breakout of optional immaterial revenues into net interest income and non-interest income, in order to ensure consistency with other PPNR schedule instructions that require reconciliation to the FRY–9C for each component of PPNR (net interest income, non-interest income, and non-interest expense).

The Federal Reserve proposes adding several new breakouts and data items as well as a new business line into the components revenues (on the annual *PPNR Projections worksheet* and the quarterly *PPNR Submission worksheet*), including:

- A new breakout for credit card revenues would split out interchange revenues from reward activity and partner-sharing contra-revenue;
- Revenue from the mortgage and home equity business line would be split into production and servicing income; provisions to reserves for representations and warranties and repurchase obligations and other liabilities related to sold mortgages also would be split out;
- Revenue related to retail and small business deposits would separate overdraft fees; and
- A new business line for Merchant Banking/Private Equity would be added; previously this business line had been included among the other business lines, typically Investment Banking.

On the annual *PPNR Projections worksheet* and the quarterly *PPNR Submission worksheet,* the Federal Reserve proposes substantively expanding the data collected on non-interest expense. The new data items would include Legal Expenses, Litigation Settlements and Penalties, and Reserves for Repurchases and Litigation related to sold and securitized mortgages. Other new data items would include marketing expenses, credit card reward expenses, expenses related to premises, fixed assets, and other real estate owned.

The Federal Reserve proposes adding several data items to the *PPNR Metrics worksheet:*

- To the Retail and Small Business section, data items related to mortgage servicing would be expanded and would include information on residential loans sold and servicing expenses; also the number of credit card accounts and deposit accounts would be added;
- To the Investment Banking section, the estimate of market share would be replaced with measures of market size, and the number of employees would be added;
- To Investment Management section, Assets Under Management would include a breakout of fixed income; and

[14] An ISIN is a number that is assigned to almost every stock and registered bond that trades throughout the world. It facilitates trade and settlement by making each security unique to every other security of the same class.

• To the Firm-Wide Metrics section, severance costs would be added, and certain data items that correspond to FR Y–9C would be added to the annual worksheet to collect projection data in order to compare the business line perspective of the FR Y–14 to the FR Y–9C items.

The Federal Reserve also proposes a one-time collection of the historical data only for these new data items on the *PPNR Submission worksheet*, the *PPNR NII worksheet*, and the *PPNR Metrics worksheet* (from first quarter 2009 through second quarter 2012) including elimination of the one-time data items exclusions. BHCs should have the historical data for the new data items available or would be able to calculate them. In third quarter 2011, the Federal Reserve collected data dating back to 2009 when PPNR data was collected for the first time under the FR Y–14. The historical data previously collected is used to assess trends in PPNR results among the BHCs and to assess whether the projections presented in the FR Y–14A are consistent with past performance. Based on the reasons stated above the Federal Reserve also proposes requiring BHCs that are newly subject to the FR Y–14 reporting requirements to submit historical data (back to first quarter 2009) with their first quarter data submission.

General Revisions to the FR Y–14A/Q/M

Respondent Panel

The Federal Reserve proposes revising the respondent panel to be consistent with the scope of application in the notice of proposed rulemaking regarding enhanced prudential standards. As revised, the respondent panel would be defined as: "Any top-tier bank holding company (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on: (i) The average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C); or (ii) the average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs, if the bank holding company has not filed an FR Y–9C for each of the most recent four quarters." The Federal Reserve also proposes expanding the respondent panel to include the 11 large BHCs that meet the asset threshold for reporting but that did not participate in the previous 2009 SCAP or CCAR 2011 exercises, except for SR 01–01 firms. As of September 30, 2011, there were approximately 33 large BHCs.[15] The asset threshold of $50 billion is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain BHCs.

Attestation

The Federal Reserve proposes requiring the signature of the BHCs' CFO (or the individual performing this equivalent function) on the FR Y–14 submission. The Federal Reserve proposes adding a new cover page to provide the appropriate attestation language (consistent, as appropriate, with the FR Y–9C) and stating in the general reporting instructions for the FR Y–14A, Q, and M the following:

The *Capital Assessments and Stress Testing* (FR Y–14A/Q/M) data submission must be signed by the Chief Financial Officer of the BHC (or by the individual performing this equivalent function). By signing the cover page of this report, the authorized officer acknowledges that any knowing and willful misrepresentation or omission of a material fact on this report constitutes fraud in the inducement and may subject the officer to legal sanctions provided by 18 U.S.C. 1001 and 1007.

Bank holding companies must maintain in their files a manually signed and attested printout of the data submitted. The cover page from the Federal Reserve's Web site reporting form should be used to fulfill the signature and attestation requirement and this page should be attached to the printout placed in the bank holding company's files.

Contact Information

The Federal Reserve proposes collecting contact information for each of the reported schedules to facilitate and expedite responses to follow up questions. Consistent with the cover page of the FR Y–9C, each schedule would include the statement, "Person to whom questions about this schedule should be directed," and would collect name/title, phone number, fax number, and email address.

Request for Additional Feedback

The Federal Reserve is seeking additional feedback on the following questions from first-time respondents of the FR Y–14Q/M on ways to reduce reporting burden:

1. Should the Federal Reserve allow a transition period during which first-time respondents of the FR Y–14Q/M may (1) use a tailored materiality threshold, (2) submit the schedules under an extended filing deadline, or (3) both?

2. If a transition period is allowed, how long should it be? Would a tailored materiality threshold of 25% of tier 1 capital or a threshold of 100% of tier 1 capital be more appropriate? For the quarterly and monthly filings, how much additional time should the Federal Reserve allow for filing the schedules?

The Federal Reserve is seeking feedback on the following question from all respondents on the Basel III/Dodd-Frank schedule.

3. On June 12, 2012, the Federal Reserve Board, the OCC, and the FDIC published a joint press release seeking comment on three proposed rulemakings that would revise and replace the agencies' current capital rules (the Basel III proposed rulemakings) and announcing the finalization of the Market Risk Capital rulemaking. The Board's press release with the pre-published rulemakings is available on the Board's public Web site at: *www.federalreserve.gov/newsevents/press/bcreg/20120612a.htm*. With respect to the annual and quarterly Basel III/Dodd-Frank schedules (except for that portion which relates to market RWAs), what are the costs and benefits associated with allowing BHCs to continue to follow existing BCBS guidance on Basel III, given that some aspects of any final rule implementing Basel III in the United States, may differ significantly from the BCBS guidance, and in particular those aspects of the guidance involving securitization exposures and credit ratings? On what basis (BCBS guidance, the proposed rulemakings, or some combination thereof) should the Basel III/Dodd-Frank schedules be based and why?

Board of Governors of the Federal Reserve System, June 29, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–16484 Filed 7–5–12; 8:45 am]

BILLING CODE 6210–01–P

[15] Although 33 BHCs currently meet the reporting asset threshold, three are SR 01–01 BHCs and are therefore exempt from reporting. SR 01–01 (Application of the Board's Capital Adequacy Guidelines to BHCs owned by Foreign Banking Organizations) states, "as a general matter, a U.S. BHC that is owned and controlled by a foreign bank that is an FHC that the Board has determined to be well-capitalized and well-managed will not be required to comply with the Board's capital adequacy guidelines."

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Thomas Watson, Grand Forks, North Dakota, as an individual and as trustee, and Thomas Watson and Toby Kommer,* Fargo, North Dakota, as trustees of the Bank Forward Employee Stock Ownership Plan, Hannaford, North Dakota ("ESOP"), to acquire control of Security State Bank Holding Company, Fargo, North Dakota ("Company"), and thereby indirectly acquire control of Bank Forward, Hannaford, North Dakota. In addition, Mr. Watson and Mr. Kommer, and the ESOP, have applied as a group acting in concert to control Company.

Board of Governors of the Federal Reserve System, June 29, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–16483 Filed 7–5–12; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Feed Materials Production Center (FMPC) in Fernald, Ohio, also known as the Fernald Environmental Management Project (FEMP), as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 27, 2012, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of DOE, DOE contractors, or subcontractors who worked at all locations at the Feed Materials Production Center (FMPC) in Fernald, Ohio, also known as the Fernald Environmental Management Project (FEMP), from January 1, 1968, through December 31, 1978, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more classes of employees included in the Special Exposure Cohort.

This designation will become effective on July 27, 2012, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–16591 Filed 7–5–12; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Sinae Kim, Ph.D., Emory University: Based on the report of an investigation conducted by Emory University (EU) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Sinae Kim, former Postdoctoral Fellow, Department of Medicine, EU, engaged in research misconduct in research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants R01 HL079137, R01 HL084471, and R03 HL096325, and National Institute of General Medical Sciences (NIGMS), NIH, grant RC1 GM092035.

FOR FURTHER INFORMATION CONTACT: John Dahlberg, Ph.D., Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

SUPPLEMENTARY INFORMATION: ORI found that the Respondent engaged in research misconduct by falsifying data that were included in five (5) manuscripts submitted in 2009 for publication to *Blood, Nature, Nature Biotechnology, Nature Medicine,* and *Science,* one (1) poster presented at the 2009 American Heart Association (AHA) meeting, four (4) laboratory meeting presentations, one (1) image file, three (3) funded NIH grants (RC1 GM092035, R01 HL079137, and R03 HL096325), and five (5) submitted NIH grant applications (RC1 HL100648–01, RC2 HL101600–01, RC4 HL106748-01, R01 HD067130–01, and U01 HL107444–01). The manuscripts submitted in 2009 were not accepted for publication.

Specifically, ORI finds that the Respondent knowingly and intentionally:

1. Falsified three (3) figures for immunocytochemistry and alkaline phosphtase (AP) staining images, karyotyping and real-time reverse transcription polymerase chain reaction (RT–PCR) results by using experimental results from her prior work in Korea with human embryonic stem cells (hESCs) to confirm the generation, differentiation, and verification of human induced pluripotent stem cells (iPSCs). The false data were included in:

a. Figures 1c and 2i (panels #4 & 13) in the *Nature* 2009, *Science* 2009, and *Nature Biotechnology* 2009 manuscripts and Supplementary Figure 4 in the *Nature* 2009 manuscript
b. Supplementary Figure 5 in the *Nature Biotechnology* 2009 manuscript
c. Figures S1B and S1D (panels #4 & 13) in the Blood 2009 manuscript
d. Supplementary Figures 8B and 8D (panels #4 & 13) in the *Nature Medicine* 2009 manuscript
e. Figure 9 in the RC1 GM092035 grant
f. Figure 8 in the R01 HL079137 grant
g. Figure 2 in the RC1 HL100648 grant
h. Figure 8 in the RC2 HL101600 grant
i. Figure 3 in the R01 HD067130 grant
j. Figure 1 in the RC4 HL106748 grant
k. Figures 1C, 1H, and 1I (panel #3) in the R03 HL096325 grant
l. Figure 5 in the U01 HL107444 grant
m. Figures 2C and 3I (panels #4 & 13) in the poster presented at the 2009 AHA meeting
n. The presentations 'Figures_Sinae Kim_120808.ppt' and 'Figures_Sinae Kim_121508.ppt'

o. The image file 'HiPS_E1_x100.jpg'

2. Falsified one (1) figure for the real-time RT–PCR data for endogenous SOX2 expression in human iPSCs derived from dermal (HiPS-E1) and cardiac (HiPS-E2) fibroblasts and iPSCs generated from peripheral blood mononuclear cells derived from coronary artery disease patients (HiPS-ECP1, HiPS-ECP2, and HiPS-ECP3) by substituting real-time RT–PCR data for endogenous OCT4 expression in the forementioned cell lines. Specifically, the false data were included in:

a. Figure 2i (panels #2 & 5) in the *Nature* 2009, *Science* 2009, and *Nature Biotechnology* 2009 manuscripts
b. Figure S1D (panels #2 & 5) in the *Blood* 2009 manuscript
c. Supplementary Figure 8D (panels #2 & 5) in the *Nature Medicine* 2009 manuscript
d. Figure 3I (panels #2 & 5) in the poster presented at the 2009 AHA meeting
e. The presentations "Figures_Sinae Kim_120808.ppt' and 'Figures_Sinae Kim_121508.ppt'

3. Falsified data in two (2) PowerPoint presentations for RT–PCR data of osteogenic-specific gene expression in bone marrow cells by substituting data for RT–PCR data in primary bone-derived and Saos2-osteosarcoma cells.

4. Falsified one (1) figure for the real-time RT–PCR data of OCT4, SOX2, KLF4, c-MYC, NANOG, hTERT, REX1, and GDF3 fold-change expression levels in H1 hESCs, human cardiac and dermal fibroblasts, HiPS-E1, HiPS-E2, HiPS-ECP1, HiPS-ECP2, and HiPS-ECP3 cell lines by substituting data from various other cell lines that did not exist. Specifically, the false data were included in:

a. Figures 2a-h in the *Nature* 2009, *Science* 2009, and *Nature Biotechnology* 2009 manuscripts
b. Figure 10 in the RC1 GM092035 grant
c. Figure 9 in the R01 HL079137 grant
d. Figure 5 in the R01 HD067130 grant
e. Figure 3A–H in the poster presented at the AHA meeting
f. The presentations "Figures_Sinae Kim_120808.ppt' and 'Figures_Sinae Kim_121508.ppt'

5. Falsified research materials when the Respondent distributed cells to laboratory members that she claimed were chemical/non-viral factor induced-mouse iPSCs and human iPSCs generated from peripheral blood of coronary artery disease patients, when she knew they were of other origin.

Dr. Kim has entered into a Voluntary Exclusion Agreement (Agreement) and has voluntarily agreed for a period of two (2) years, beginning on June 5, 2012:

(1) To exclude herself voluntarily from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as "covered transactions" pursuant to HHS' Implementation (2 CFR part 376, *et seq*) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the "Debarment Regulations"); and

(2) To exclude herself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2012–16572 Filed 7–5–12; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of Declaration Regarding Emergency Use of All Oral Formulations of Doxycycline Accompanied by Emergency Use Information

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: The Secretary of Homeland Security determined on September 23, 2008 that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, Bacillus anthracis. On the basis of that determination, and pursuant to section 564(b) of the Federal Food, Drug, and Cosmetic Act ("FD&C Act"), the Secretary of Health and Human Services is renewing her July 20, 2011 declaration of an emergency justifying the authorization of emergency use of all oral formulations of doxycycline accompanied by emergency use information subject to the terms of any authorization issued by the Commissioner of Food and Drugs under 21 U.S.C. 360bbb–3(a). This notice is being issued in accordance with section 564(b)(4) of the FD&C Act, 21 U.S.C. 360bbb–3(b)(4).

DATES: This Notice and referenced HHS declaration are effective as of July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, MD, MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: On September 23, 2008, former Secretary of Homeland Security, Michael Chertoff, determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*—although there is no current domestic emergency involving anthrax, no current heightened risk of an anthrax attack, and no credible information indicating an imminent threat of an attack involving *Bacillus anthracis*.

On October 1, 2008, on the basis of that determination, and pursuant to section 564(b) of the FD&C Act, 21 U.S.C. 360bbb–3(b), former Secretary of Health and Human Services, Michael O. Leavitt, declared an emergency justifying the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a).[1] On October 1, 2009 and October 1, 2010, I renewed the former Secretary's declaration,[2] and on July 20, 2011, I renewed and amended the declaration to declare that the emergency justifies emergency use of all oral formulations of doxycycline accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a).[3]

On the basis of the September 23, 2008 determination by the Secretary of Homeland Security and pursuant to section 564(b) of the FD&C Act, I hereby renew my July 20, 2011 declaration that the emergency justifies emergency use of all oral formulations of doxycycline accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. § 360bbb–3(a). I am issuing this notice in accordance with section 564(b)(4) of

[1] Pursuant to section 564(b)(4) of the FD&C Act, notice of the determination by the Secretary of Homeland Security and the declaration by the Secretary of Health and Human Services was provided at 73 FR 58242 (October 6, 2008).

[2] Pursuant to section 564(b)(4) of the FD&C Act, notices of the renewal of the declaration of the Secretary of Health and Human Services were provided at 74 FR 51,279 (Oct. 6, 2009) and 75 FR 61,489 (Oct. 5, 2010).

[3] Pursuant to section 564(b)(4) of the FD&C Act, notice of the renewal and amendment of the declaration of the Secretary of Health and Human Services was provided at 76 FR 44,926 (July 27, 2011).

the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b)(4).

Dated: June 28, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–16588 Filed 7–5–12; 8:45am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10433, CMS–10438, CMS–10439 and CMS–10440]

Agency Information Collection Activities: Proposed Collection; Comment Request; Webinars

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Initial Plan Data Collection to Support Qualified Health Plan (QHP) Certification and Other Financial Management and Exchange Operations; *Use:* As required by the final rule that published on March 27, 2012 (77 FR 18310), entitled *CMS–9989–F: Establishment of Exchanges and Qualified Health Plans*; Exchange Standards for Employers, each Exchange must assume responsibilities related to the certification and offering of Qualified Health Plans (QHPs). To offer insurance through an Exchange, a health insurance issuer must have its health plans certified as QHPs by the Exchange. A QHP must meet certain minimum certification standards, such as network adequacy, essential health benefits, and actuarial value. In order to meet those standards, the Exchange is responsible for collecting data and validating that QHPs meet these minimum requirements as described in the Exchange rule under 45 CFR 155 and 156, based on the Affordable Care Act, as well as other requirements determined by the Exchange. In addition to data collection for the certification of QHPs, the reinsurance and risk adjustment programs outlined by the Affordable Care Act, detailed in 45 CFR part 153 and in the final rule that published on March 23, 2012 (77 FR 17220) entitled CMS- 9975–F: Standards for Reinsurance, Risk Corridors, and Risk Adjustment, have general information reporting requirements that apply to non-QHPs outside of the Exchanges. *Form Number:* CMS–10433 (OCN: 0938–New); *Frequency:* Annually; *Affected Public:* States and Private Sector: Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 3400; *Number of Responses:* 3400; *Total Annual Hours:* 224,435 hours in year one and 166,435 hours in years two and three (For policy questions regarding the QHP Certification data collection, contact Lourdes Grindal-Miller at (301) 492- 4345. For policy questions regarding risk adjustment and reinsurance data collection, contact Milan Shah call (301) 492- 4427. For all other issues, call (410) 786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of information collection*: Data Collection to Support Eligibility Determinations and Enrollment for Employees in the Small Business Health Options Program; *Use:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Section 1311(b)(1)(B) of the Affordable Care Act requires that the Small Business Health Option Program (SHOP) assist qualified small employers in facilitating the enrollment of their employees in qualified health programs (QHPs) offered in the small group market. Section 1311(c)(1)(F) of the Affordable Care Act requires HHS to establish criteria for certification of health plans as QHPs and that these criteria must require plans to utilize a uniform enrollment form that qualified employers may use. Further, section 1311(c)(5)(B) requires HHS to develop a model application and Web site that assists employers in determining if they are eligible to participate in SHOP. Consistent with these authorities, HHS has developed a single, streamlined form that employees will use apply to the SHOP. Section 155.730 of the Exchanges Final Rule (77 FR 18310) provides more detail about this "single employee application," which will be used to determine employee eligibility, QHP selection, and enrollment of qualified employees and their dependents.

The information will be required of each employee upon initial application with subsequent information collections for the purposes of confirming accuracy of previous submissions or updating information from previous submissions. Information collection will begin during initial open enrollment in October 2013, per § 155.410 of the Exchanges Final Rule. Applications for the SHOP will be collected year round, per the rolling enrollment requirements of § 155.725 of the Exchanges Final Rule.

Employees will be able to submit an application for the SHOP online, using a paper application, over the phone through a call center operated by an Exchange, or in person through an agent, broker, or Navigator, per § 155.730(f) of the Exchanges Final Rule. If an employee does not enroll in coverage through the SHOP, the information will be erased after a specified period of time. If an employee enrolls in coverage through the SHOP, the information will be retained to document the enrollment, to allow reconciliation with issuer records, and to provide information for future coverage renewals or changes in coverage.

Every qualified employee of an employer participating in the SHOP who wishes to apply for coverage through the SHOP will need to complete an application to determine his or her eligibility, QHP selection, and enrollment of the employee and his or her dependents. The applicant will also be asked to verify his or her

understanding of the application and sign attestations regarding information in the application. The completed application will be submitted to the SHOP in the employer's state.

Applicants who choose to complete the electronic application will need to create an online account at the beginning of the application process.

We estimate that it will take approximately 0.159 hours (9.53 minutes) per applicant to submit a completed paper application. The Congressional Budget Office (CBO) estimates approximately 3 million people will enroll in health insurance through a SHOP in 2014. Assuming family size of approximately 3 per employee, we expect approximately 1 million employees to complete an application in 2014 for a total of approximately 93,300 burden hours.

CBO estimates approximately 2 million people will enroll in health insurance through a SHOP in 2015 and 3 million in 2016. Consequently, we estimate that approximately 666,666 employees will apply to a SHOP in 2015 and approximately 1 million will apply in 2016. *Form Number:* CMS–10438 (OCN: 0938—NEW); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 1,000,000; *Total Annual Responses:* 1,000,000; *Total Annual Hours:* 93,300 hours. (For policy questions regarding this collection contact Leigha Basini at 301–492–4307. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of information collection:* Data Collection to Support Eligibility Determinations and Enrollment for Small Businesses in the Small Business Health Options Program; *Use:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Section 1311(b)(1)(B) of the Affordable Care Act requires that the SHOP assist qualified small employers in facilitating the enrollment of their employees in QHPs offered in the small group market. Section 1311(c)(1)(F) of the Affordable Care Act requires HHS to establish criteria for certification of health plans as QHPs and that these criteria must require plans to utilize a uniform enrollment form that qualified employers may use. Further, section 1311(c)(5)(B) requires HHS to develop a model application and Web site that assists employers in determining if they are eligible to participate in SHOP. Consistent with these authorities, HHS has developed a single, streamlined form that employers will use to apply to the SHOP. Section 155.730 of the Exchanges Final Rule (77 FR 18310) provides more detail about this "single employer application," which will be used to determine employer eligibility and to collect information necessary for purchasing coverage through the SHOP.

The information will be required of each employer upon initial application with subsequent information collections for the purposes of confirming accuracy of previous submissions or updating information from previous submissions. Information collection will begin during initial open enrollment in October 2013, per § 155.410 of the Exchanges Final Rule. Applications for the SHOP will be collected year round, per the rolling enrollment requirements of § 155.725 of the Exchanges Final Rule

Employers will be able to submit an application for the SHOP online, using a paper application, over the phone through a call center operated by an Exchange, or in person through an agent, broker, or Navigator, per § 155.730(f) of the Exchanges Final Rule. If an employer does not complete the application, the information will be erased after a specified period of time. If an employer completes the application and offers coverage to qualified employees through the SHOP, the information will be retained to document the offer of coverage, to allow reconciliation with issuer records, and to provide information for future coverage renewals or changes in coverage.

Every employer wishing to apply for coverage through the SHOP will need to complete an application to determine its eligibility to participate in the SHOP and to provide the information necessary for the employer to purchase coverage through the SHOP. The applicant will also be asked to verify his or her understanding of the application and sign attestations regarding information in the application. The completed application will be submitted to the SHOP in the employer's state. Applicants who choose to complete the electronic application will need to create an online account at the beginning of the application process.

We estimate that it will take approximately 0.209 hours (12.57 minutes) per applicant to submit a completed paper application. We had several individuals fill out the paper application, averaged their times to complete the application, and factored in additional time due to potential variation in applicants' health literacy rate. The Congressional Budget Office (CBO) estimates approximately 3 million people will enroll in health insurance through a SHOP in 2014. Assuming a small business size of approximately 5 employees and a family size of approximately 3 per employee, we estimate that approximately 200,000 employers will apply to a SHOP in 2014. Consequently, we expect approximately 200,000 employers to complete an application in 2014 for a total of approximately 24,520 burden hours.

CBO estimates approximately 2 million people will enroll in health insurance through a SHOP in 2015 and 3 million in 2016. Consequently, we estimate that approximately 133,333 employers will apply to a SHOP in 2015 and approximately 200,000 will apply in 2016. *Form Number:* CMS–10439 (OCN: 0938—NEW); *Frequency:* Once per year; *Affected Public:* Private Sector: Business or other for-profit, non-for-profit institutions, or farms; *Number of Respondents:* 200,000; *Total Annual Responses:* 200,000; *Total Annual Hours:* 24,520 hours. (For policy questions regarding this collection contact Leigha Basini at 301–492–4307. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New collection; *Title of information collection:* Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children's Health Insurance Program Agencies; *Use:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden

estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Section 1413 of the Affordable Care Act directs the Secretary of Health and Human Services to develop and provide to each State a single, streamlined form that may be used to apply for coverage through the Exchange and Insurance Affordability Programs, including Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program, as applicable. The application must be structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who qualify for the programs. A State may develop and use its own single streamlined application if approved by the Secretary in accordance with section 1413 and if it meets the standards established by the Secretary.

Section 155.405(a) of the Exchange Final Rule (77 FR 18310) provides more detail about the application that must be used by the Exchange to determine eligibility and to collect information necessary for enrollment. The regulations in § 435.907 and § 457.330 establish the requirements for State Medicaid and CHIP agencies related to the use of the single streamlined application. CMS is designing the single streamlined application to be a dynamic online application that will tailor the amount of data required from an applicant based on the applicant's circumstances and responses to particular questions. The paper version of the application will not be able to be tailored in the same way but is being designed to collect only the data required to determine eligibility. Individuals will be able to submit an application online, through the mail, over the phone through a call center, or in person, per § 155.405(c)(2) of the Exchange Final Rule, as well as through other commonly available electronic means as noted in § 435.907(a) and § 457.330 of the Medicaid Final Rule. The application may be submitted to an Exchange, Medicaid or CHIP agency.

The online application process will vary depending on each applicant's circumstances, their experience with health insurance applications and online capabilities. The goal is to solicit sufficient information so that in most cases no further inquiry will be needed. We estimate that on average it will take approximately .50 hours (30 minutes) to complete for people applying for Insurance Affordability Programs. It will take an estimated .25 hours (15 minutes) to complete without consideration for Insurance Affordability Programs. We expect approximately 7,700,260 applications to be submitted for Insurance Affordability Programs between 2014 and 2016. The total burden is estimated to be 2,264,329 hours for 2014, and 605,920 hours and 979,881 hours for years 2015 and 2016, respectively. We estimate 1,139, 240 applications to be submitted online without consideration for Insurance Affordability Programs between 2014 and 2016, resulting in 71,203 hours of burden each year in 2014 and in 2015, and 142,405 burden hours in 2016. The paper application process will take approximately .75 hours (45 minutes) to complete for those applying for Insurance Affordability Programs and .33 hours (20 minutes) for those applying without consideration for Insurance Affordability Programs. We expect approximately 855,584 applications to be submitted for Insurance Affordability Programs on paper in 2014 through 2016 for a total of 377,388 estimated burden hours in 2014. The burden hours are projected to be 100,987 hours and 163,314 hours in 2015 and 2016, respectively. We estimate 126,581 applications will be submitted without consideration for Insurance Affordability Programs from 2014 through 2016. Total burden hours are expected to be 10,443 hours in 2014 and 2015, and 20,886, in 2016. *Form Number:* CMS–10440 (OCN: 0938– NEW); *Frequency:* Once per year; *Affected Public:* Individuals and households; *Number of Respondents:* 3,273,889; *Total Annual Responses:* 3,273,889; *Total Annual Hours:* 1,669,683 hours. (For policy questions regarding this collection contact Hannah Moore at 301–492–4232. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *September 4, 2012:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier ( ), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 29, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–16508 Filed 7–2–12; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10427 and CMS–10437]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* For-Profit PACE Study; *Use:* The Program of All Inclusive Care of the Elderly (PACE) aims to provide integrated care and services to the frail elderly at risk of institutionalization to enable them to remain in the community. Under the Balanced Budget Act of 1997 (BBA), the not-for-profit PACE plans were established as permanent providers under the Medicare and Medicaid programs. The BBA also mandated a demonstration of for-profit PACE plans. This study will estimate the differences in quality and access to care between the for-profit and not-for-profit PACE plans. The data collected in the survey will be used to measure the outcomes of interest-differences in access to and quality of care delivered to PACE enrollees. To measure these key outcomes, the survey will collect data on access to and satisfaction with healthcare, personal care, and transportation assistance provided by the plans. *Form Number:* CMS–10427 (OCN: 0938–New); *Frequency:* Yearly; *Affected Public:* Individuals. *Number of Respondents:* 813. *Number of Responses:* 813. *Total Annual Hours:* 447. (For policy questions regarding this collection contact Julia Zucco at 410–786–6670. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Generic Social Marketing & Consumer Testing Research; *Use:* The purpose of this submission is to request an Information Collection Request (ICR) generic clearance for a program of consumer research aimed at a broad audience of those affected by CMS programs including Medicare, Medicaid, Children's Health Insurance Program (CHIP), and health insurance exchanges. This program extends strategic efforts to reach and tailor communications to beneficiaries, caregivers, providers, stakeholders, and any other audiences that would support the Agency in improving the functioning of the health care system, improve patient care and outcomes, and reduce costs without sacrificing quality of care. With the clearance, CMS will create a fast track, streamlined, proactive process for collection of data and utilizing the feedback on service delivery for continuous improvement of communication activities aimed at diverse CMS audiences.

The generic clearance will allow rapid response to inform CMS initiatives using a mixture of qualitative and quantitative consumer research strategies (including formative research studies and methodological tests) to improve communication with key CMS audiences. As new information resources and persuasive technologies are developed, they can be tested and evaluated for beneficiary response to the materials and delivery channels. Results will inform communication development and information architecture as well as allow for continuous quality improvement. The overall goal is to maximize the extent to which consumers have access to useful sources of CMS program information in a form that can help them make the most of their benefits and options.

The activities under this clearance involve social marketing and consumer research using samples of self-selected customers, as well as convenience samples, and quota samples, with respondents selected either to cover a broad range of customers or to include specific characteristics related to certain products or services. All collection of information under this clearance will utilize a subset of items drawn from a core collection of customizable items referred to as the Social Marketing and Consumer Testing Item Bank. This item bank is designed to establish a set of pre-approved generic question that can be drawn upon to allow for the rapid turn-around consumer testing required for CMS to communicate more effectively with its audiences. The questions in the item bank are divided into two major categories. One set focuses on characteristics of individuals and is intended primarily for participant screening and for use in structured quantitative on-line or telephone surveys. The other set is less structured and is designed for use in qualitative one-on-one and small group discussions or collecting information related to subjective impressions of test materials. A Study Initiation Request Form detailing each specific study (description, methodology, estimated burden) conducted under this clearance will be submitted before any testing is initialed. Results will be compiled and disseminated so that future communication can be informed by the testing results. We will use the findings to create the greatest possible public benefit. *Form Number:* CMS–10427 (OCN: 0938–New); *Frequency:* Yearly; *Affected Public:* Individuals. *Number of Respondents:* 41,592. *Number of Responses:* 28,800. *Total Annual Hours:* 21,488. (For policy questions regarding this collection contact Neal Hickson at 410–786–6737. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *August 6, 2012.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: June 29, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operotions ond Regulatory Affairs.

[FR Doc. 2012–16526 Filed 7–5–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–R–218, CMS–10428, CMS–10441, CMS–10261, CMS–10338, CMS–10137, CMS–10237 and CMS–10003]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Extension without change of a currently approved collection. *Title of Information Collection:* HIPAA Standards for Electronic Transactions and Supporting Regulations in 45 CFR Part 162. *Use:* This information collection request has no substantive changes since the last OMB approval. The adopted transaction standards currently in use for electronic transactions (Version 4010/4010a) are compatible with the ICD–9–CM adopted code set that is used to report diagnoses and hospital inpatient services. However, the ICD–10 codes cannot be used with Version 4010/4010a, because this version does not have a specific qualifier or indicator for reporting ICD–10 codes.

Version 5010 supports the use of the ICD–10 code set by making available a qualifier to indicate that an ICD–10 code is being reported. Like ICD–9, ICD–10 codes are reported in claim and payment transactions, as well as eligibility inquiries and responses and requests for referrals and authorizations. In Version 5010, the number of codes required in any given transaction does not change. It is possible that a fewer number of codes in a given transaction may be necessary to report the same information reported with ICD–9 codes because ICD–10 codes are more specific. *Form Number:* CMS–R–218 (OCN: 0938–0866). *Frequency:* Occasionally. *Affected Public:* Private Sector (Business or other for-profits, Not-for-profit institutions). *Number of Respondents:* 696,026. *Total Annual Responses:* 696,026. *Total Annual Hours:* 6,960,260. (For policy questions regarding this collection contact Gladys Wheeler at 410–786–0273. For all other issues call 410–786–1326.)

2. Type of Information Collection Request: Extension of a currently approved collection; *Title:* PCIP Authorization to Share Personal Health Information; *Use:* On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148. Section 1101 of the law establishes a "temporary high risk health insurance pool program" (which has been named the Pre-Existing Condition Insurance Plan, or PCIP) to provide health insurance coverage to currently uninsured individuals with pre-existing conditions. The law authorizes HHS to carry out the program directly or through contracts with states or private, non-profit entities.

Reapproval of this package is being requested as a result of CMS, in its administration of the PCIP program, serving as a covered entity under the Health Insurance Portability and Accountability Act (HIPAA). Without a valid authorization, the PCIP program is unable to disclose information, with respect to an applicant or enrollee, about the status of an application, enrollment, premium billing or claim, to individuals of the applicant's or enrollee's choosing. The HIPAA Authorization Form has been modeled after CMS' Medicare HIPAA Authorization Form (OMB control number 0938–0930) and is used by applicants or enrollees to designate someone else to communicate with PCIP about their protected health information (PHI).

Unless permitted or required by law, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (§ 164.508) prohibits CMS' PCIP program (a HIPAA covered entity) from disclosing an individual's protected health information without a valid authorization. In order to be valid, an authorization must include specified core elements and statements.

CMS will make available to PCIP applicants and enrollees a standard, valid authorization to enable beneficiaries to communicate with PCIP about their personal health information. This is a critical tool because the population the PCIP program serves is comprised of individuals with pre-existing conditions who may be incapacitated and need an advocate to help them apply for or receive benefits from the program. This standard authorization will simplify the process of requesting information disclosure for beneficiaries and minimize the response time for the PCIP program.

Each individual will be asked to complete the form which will include providing the individual's name, PCIP account number (if known), date of birth, what personal health information they agree to share, the length of time the individual agrees their personal health information can be shared, the names and addresses of the third party the individual wants PCIP to share their personal health information with, and an attestation that the individual is giving PCIP permission to share their personal health information with the third party listed in the form. This completed form will be submitted to the PCIP benefits administrator, GEHA, which contracts with CMS.

We estimate that it will take approximately 15 minutes per applicant to complete and submit a HIPAA Authorization Form to the PCIP program.

The federally-run PCIP program operates in 23 states plus the District of Columbia and receives an average of 35,000 enrollment applications per year. To estimate the number of PCIP applicants and enrollees who may complete an authorization, we looked at the percentage of individuals who request an authorization in Medicare as a baseline. Medicare estimates 3% of its population will submit an authorization per year. However, since the PCIP program caters to an exclusive population comprised of individuals who have one or more pre-existing conditions, we believe it is likely we could receive double the percentage estimated by Medicare. Accordingly, PCIP estimates 6% (or 2,100) of its applicants and enrollees may submit an authorization per year.

Based on the above, it is estimated that up to 2,100 applicants and enrollees may submit an authorization annually. There is no cost to PCIP beneficiaries to request, complete, submit, or have the authorization form processed by PCIP. It should take approximately 15 minutes for a beneficiary to complete the authorization form. 15 minutes multiplied by 2,100 beneficiaries equals 525 hours. *Form Number:* CMS–10428 (OCN#: 0938–1161); *Frequency:* Reporting—Once; *Affected Public:* Individuals or households; *Number of Respondents:* 2,100; *Total Annual Responses:* 2,100; *Total Annual Hours:* 525. (For policy questions regarding this collection contact Geoffrey Cabin at 410–786–1744. For all other issues call 410–786–1326.)

3. Type of Information Collection Request: New collection; *Title:* Medicare Plan Finder Experiment; *Use:* The mission of the Centers for Medicare & Medicaid Services (CMS) is to ensure the provision of health care to its beneficiaries. Recent legislative mandates, including the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, require CMS to provide information to beneficiaries about the quality of the Medicare health and prescription drug plans. To provide that information, all Medicare health and prescription drug plans with an enrollment of 600 or more are required to collect and report data following protocols that CMS has established. CMS has also contracted with various organizations to develop valid and reliable quality measures and to consider how best to report those measures to beneficiaries.

A primary vehicle for reporting quality information to beneficiaries is the Medicare Plan Finder, a section of the Medicare Web site that is intended to help beneficiaries make informed choices among health and prescription drug plans. The Medicare Plan Finder

tool contains a great deal of potentially useful information, including extensive data on the fixed and variable costs associated with being enrolled in plans, the benefits and coverage that plans offer, and the quality of service that plans provide, as revealed by member experience data, disenrollment statistics, and a variety of measures of clinical processes and outcomes.

One of the key challenges that CMS has faced is how to engage beneficiaries with the quality information provided in the Medicare Plan Finder. Among the possible reasons that beneficiaries may fail to engage with this information are first, that several steps are required for a user of the Medicare Plan Finder to gain access to comparative plan information, and second that once the user does reach a data display, the amount of information presented is voluminous, and can seem overwhelming.

This study will use an experimental design to assess the effectiveness of two potential enhancements to the Medicare Plan Finder tool that may help address these barriers to engagement and use of quality information. The purpose of this experiment is to test the effects of two prospective enhancements to the Medicare Plan Finder (MPF) Web site. We refer to these prospective enhancements as the "Quick Links" home page and the "enhanced data display." *Form Number:* CMS–10441 (OCN#: 0938–New); *Frequency:* Reporting—Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 600; *Total Annual Responses:* 600; *Total Annual Hours:* 252. (For policy questions regarding this collection contact David Miranda at 410–786–7819. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title:* Part C Medicare Advantage Reporting Requirements and Supporting Regulations in 42 CFR § 422.516(a); *Use:* The Centers for Medicare and Medicaid Services (CMS) established reporting requirements for Medicare Advantage Organizations (MAOs) under the authority described in 42 CFR § 422.516(a). It is noted that each MAO must have an effective procedure to develop, compile, evaluate, and report to CMS, to its enrollees, and to the general public, at the times and in the manner that CMS requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to the cost of its operations, patterns of service utilization, availability, accessibility, and acceptability of its services, developments in the health status of its enrollees, and other matters that CMS may require.

CMS also has oversight authority over cost plans which includes establishment of reporting requirements. The data requirements in this supporting statement are specifically relevant to the cost plan requirements in section 1876(c)(1)(C) of the Social Security Act which establishes beneficiary enrollment and appeal rights.

CMS initiated new Part C reporting requirements with the Office of Management and Budget (OMB) approval of the "Information Collection Request" (ICR) under the Paperwork Reduction Act of 1995 (PRA) in December, 2008 (OMB# 0938–New; CMS–10261). National PACE plans and 1833 cost plans are excluded from reporting all the new Part C Reporting Requirements measures. The initial ICR involved thirteen measures. Two of these thirteen measures have been suspended from reporting because the information is available elsewhere: Measurement #10 Agent Compensation Structure and; Measurement #11 Agent Training and Testing. One new measure was added beginning 2012: Enrollment and Disenrollment. The ICR Reference number is 201105–0938–008. The OMB control number is 0938–1054.

CMS suspended the "Benefit Utilization" measure in late 2011. Thus, calendar year 2011 benefit utilization data were not reported. This suspension remains in effect and will lead to a reduction in burden. CMS is requesting the suspension of two additional measures: "Procedure Frequency" and Provider Network Adequacy." The suspensions are all due to the fact that equivalent data are already being collected or are available through other sources in CMS. These suspensions will lead to a decrease in burden. CMS is adding one additional data element to its "grievances" measure. The grievance measure currently has 10 reporting categories. The additional category will be "CMS Issues." This will add a slight increase to burden for this measure only. Overall, the approval of this ICR will lead to an estimated burden reduction of 88,730 hours and $5,420,095 in costs on an annual basis. *Form Number:* CMS–10261 (OCN#: 0938–1054); *Frequency:* Yearly, Quarterly; *Affected Public:* Private Sector—Business or other for-profits; *Number of Respondents:* 1,375; *Total Annual Responses:* 6,715; *Total Annual Hours:* 120,190. (For policy questions regarding this collection contact Terry Lied at 410–786–8973. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers; *Use:* The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. As part of the Act, Congress added PHS Act section 2719, which provides rules relating to internal claims and appeals and external review processes. On July 23, 2010, interim final regulations (IFR) set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations. The DOL claims procedure regulation requires an employee benefit plan to provide third-party notices and disclosures to participants and beneficiaries of the plan. In addition, paragraphs (b)(3)(ii)(C) and (b)(2)(ii)(C) of the IFR add an additional requirement that non-grandfathered group health plans and issuers of non-grandfathered health policies provide to the claimant, free of charge, any new or additional evidence considered, or generated by the plan or issuer in connection with the claim. Paragraph (b)(3)(i) of the IFR requires issuers offering coverage in the individual health insurance market to also generally comply with the DOL claims procedure regulation as updated by the Secretary of HHS in paragraph (b)(3)(ii) of the IFR for their internal claims and appeals processes.

Furthermore, PHS Act section 2719 and the IFR provide that non-grandfathered group health plans, issuers offering group health insurance coverage, and self-insured non-federal governmental plans (through the IFR amendment dated June 24, 2011) must comply either with a State external review process or a Federal external review process. The IFR provides a basis for determining when such plans and issuers must comply with an applicable

State external review process and when they must comply with the Federal external review process. Plans and issuers that are required to participate in the Federal external review process must have electronically elected either the HHS-administered process or the private accredited IRO process as of January 1, 2012, or, in the future, at such time as the plans and issuers use the Federal external review process. Plans and issuers must notify HHS as soon as possible if any of the above information changes at any time after it is first submitted. The election requirements associated with this ICR are articulated through guidance published June 22, 2011 at *http://cciio.cms.gov/resources/files/hhs_srg_elections_06222011.pdf*. The election requirements are necessary for the Federal external review process to provide an independent external review as requested by claimants. Form Number: CMS–10338 (OCN: 0938–1099); Frequency: Occasionally; Affected Public: State, Local, Tribal Governments; Business or other for-profit; Not-for-profit institutions; Number of Respondents: 46,773; Number of Responses: 218,657,161; Total Annual Hours: 930,267. For policy questions regarding this collection, contact Colin McVeigh at (301) 492–4263. For all other issues call (410) 786–1326.

6. *Type of Information Collection Request:* Revision of a currently approved collection; *Title:* Application for New and Expanding Medicare Prescription Drug Plans and Medicare Advantage Prescription Drug (MA–PD), including Cost Plans and Employer Group Waiver Plans; *Use:* The Medicare Prescription Drug Benefit program was established by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and is codified in section 1860D of the Social Security Act (the Act). Section 101 of the MMA amended Title XVIII of the Social Security Act by redesignating Part D as Part E and inserting a new Part D, which establishes the voluntary Prescription Drug Benefit Program ("Part D"). The MMA was amended on July 15, 2008 by the enactment of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), on March 23, 2010 by the enactment of the Patient Protection and Affordable Care Act and on March 30, 2010 by the enactment the Health Care and Education Reconciliation Act of 2010 (collectively the Affordable Care Act).

Coverage for the prescription drug benefit is provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates, and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application.

Collection of this information is mandated in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) in Subpart 3. The application requirements are codified in Subpart K of 42 CFR 423 entitled "*Application Procedures and Contracts with PDP Sponsors.*"

Effective January 1, 2006, the Part D program established an optional prescription drug benefit for individuals who are entitled to Medicare Part A or enrolled in Part B. In general, coverage for the prescription drug benefit is provided through PDPs that offer drug-only coverage, or through MA organizations that offer integrated prescription drug and health care coverage (MA–PD plans). PDPs must offer a basic drug benefit. Medicare Advantage Coordinated Care Plans (MA–CCPs) must offer either a basic benefit or may offer broader coverage for no additional cost. Medicare Advantage Private Fee for Service Plans (MA–PFFS) may choose to offer a Part D benefit. Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Plans may also provide a Part D benefit. If any of the contracting organizations meet basic requirements, they may also offer supplemental benefits through enhanced alternative coverage for an additional premium.

Applicants may offer either a PDP or MA–PD plan with a service area covering the Nation (i.e., offering a plan in every region) or covering a limited number of regions. MA–PD and Cost Plan applicants may offer local plans.

There are 34 PDP regions and 26 MA regions in which PDPs or regional MA–PDs may be offered respectively. The MMA requires that each region have at least two Medicare prescription drug plans from which to choose, and at least one of those must be a PDP. Requirements for contracting with Part D Sponsors are defined in Part 423 of 42 CFR.

This clearance request is for the information collected to ensure applicant compliance with CMS requirements and to gather data used to support determination of contract awards. *Form Number:* CMS–10137 (OCN: 0938–0936); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 241; *Total Annual Responses:* 241; *Total Annual Hours:* 2,132. (For policy questions regarding this collection contact Linda Anders at 410–786–0459. For all other issues call 410–786–1326.)

7. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Part C Medicare Advantage and 1876 Cost Plan Expansion Application; *Use:* Collection of this information is mandated in Part C of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) in Subpart K of 42 CFR 422 entitled "*Contracts with Medicare Advantage Organizations.*" In addition, the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) amended titles XVII and XIX of the Social Security Act to improve the Medicare program.

In general, coverage for the prescription drug benefit is provided through prescription drug plans (PDPs) that offer drug-only coverage or through Medicare Advantage (MA) organizations that offer integrated prescription drug and health care products (MA–PD plans). PDPs must offer a basic drug benefit. Medicare Advantage Coordinated Care Plans (MA–CCPs) either must offer a basic benefit or may offer broader coverage for no additional cost. Medicare Advantage Private Fee for Service Plans (MA–PFFS) may choose to offer enrollees a Part D benefit. Employer Group Plans may also provide Part D benefits. If any of the contracting organizations meet basic requirements, they may also offer supplemental benefits through enhanced alternative coverage for an additional premium.

Organizations wishing to provide healthcare services under MA and/or MA–PD plans must complete an application, file a bid, and receive final approval from CMS. Existing MA plans may request to expand their contracted service area by completing the Service Area Expansion (SAE) application. Applicants may offer a local MA plan in a county, a portion of a county (i.e., a partial county) or multiple counties. Applicants may offer a MA regional plan in one or more of the 26 MA regions.

This clearance request is for the information collected to ensure

applicant compliance with CMS requirements and to gather data used to support determination of contract awards. *Form Number:* CMS–10237 (OCN 0938–0935). *Frequency:* Yearly. *Affected Public:* Private Sector (Business or other for-profits, Not-for-profit institutions). *Number of Respondents:* 566. *Total Annual Responses:* 566. *Total Annual Hours:* 22,955. (For policy questions regarding this collection contact Barbara Gullick at 410–786–0563. For all other issues call 410–786–1326.)

8. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Notice of Denial of Medical Coverage (or Payment); *Use:* Section 1852(g)(1)(B) of the Social Security Act (SSA) requires Medicare health plans to provide enrollees with a written notice in understandable language that explains the plan's reasons for denying a request for a service or payment for a service the enrollee has already received. The written notice must also include a description of the applicable appeals processes. Regulatory authority for this notice is set forth in Subpart M of Part 422 at 42 CFR 422.568, 422.572, 417.600(b), and 417.840.

Section 1932 of the Social Security Act (SSA) sets forth requirements for Medicaid managed care plans, including beneficiary protections related to appealing a denial of coverage or payment. The Medicaid managed care appeals regulations are set forth in Subpart F of Part 438 of Title 42 of the CFR. Rules on the content of the written denial notice can be found at 42 CFR § 438.404.

This notice combines the existing Notice of Denial of Medicare Coverage with the Notice of Denial of Payment and includes *optional* language to be used in cases where a Medicare health plan enrollee also receives full Medicaid benefits that are being managed by the Medicare health plan. *Form Number:* CMS–10003 (OCN: 0938–0829). *Frequency:* Occasionally. *Affected Public:* Private Sector (Business or other for-profits, Not-for-profit institutions). *Number of Respondents:* 665. *Total Annual Responses:* 6,960,410. *Total Annual Hours:* 1,159,604. (For policy questions regarding this collection contact Gladys Wheeler at 410–786–0273. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by September 4, 2012:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 29, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–16514 Filed 7–5–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2000–D–0187 Formerly Docket No. 2000D–1267]

Draft Guidance for Industry: Recommendations for Donor Questioning, Deferral, Reentry, and Product Management To Reduce the Risk of Transfusion-Transmitted Malaria; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Recommendations for Donor Questioning, Deferral, Reentry and Product Management to Reduce the Risk of Transfusion-Transmitted Malaria" dated June 2012. The draft guidance document provides blood establishments that collect blood and blood components with recommendations for questioning and deferring donors of blood and blood components, allowing their reentry, and product management to reduce the risk of transfusion-transmitted malaria. This guidance replaces the draft guidance entitled "Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria" dated June 2000. The draft guidance, when finalized, will supersede the FDA memorandum to all registered blood establishments entitled "Recommendations for Deferral of Donors for Malaria Risk" dated July 26, 1994. The recommendations contained in the draft guidance are not applicable to donors of Source Plasma.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 4, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Melissa Reisman, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: Recommendations for Donor Questioning, Deferral, Reentry and Product Management to Reduce the Risk of Transfusion-Transmitted Malaria" dated June 2012. The draft guidance document provides blood establishments that collect blood and

blood components with recommendations for questioning and deferring donors of blood and blood components, and allowing their reentry, to reduce the risk of transfusion-transmitted malaria. This draft guidance document also provides recommendations for product management, including recommendations regarding product retrieval and quarantine, and notification of consignees of blood and blood components in the event that a blood establishment determines that blood or blood components have been collected from a donor who should have been deferred due to possible malaria risk. Finally, the draft guidance revises FDA's policy regarding donors who are residents of non-endemic countries and who have traveled to the Mexican states of Quintana Roo or Jalisco, and allows for donation without any deferral for malaria risk, provided the donor meets all other donor eligibility criteria.

The draft guidance replaces the draft guidance entitled "Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria" dated June, 2000, and, when finalized, will supersede the FDA memorandum to all registered blood establishments entitled "Recommendations for Deferral of Donors for Malaria Risk," dated July 26, 1994. Since publication of these documents, FDA convened a scientific workshop on "Testing for Malarial Infections in Blood Donors" in July 2006, and also discussed the issue of blood donor deferral for malaria risk with the FDA Blood Products Advisory Committee (BPAC) on several occasions. The recommendations contained in the draft guidance are based, in part, on recommendations from BPAC, the public comments received on the earlier documents, and the comments received during the scientific workshop. In addition, FDA is aware that dengue viruses are endemic in Quintana Roo and Jalisco. FDA is currently evaluating the risk of dengue virus infections in U.S. blood donors that are acquired either locally or elsewhere in the world, including in Mexico, and may address this issue in future guidance.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 640 have been approved under OMB control number 0910–0116. The collections of information in 21 CFR 630.6 have been approved under OMB control number 0910–0116. The collections of information in 21 CFR 606.171 have been approved under OMB control number 0910–0458.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–16528 Filed 7–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0563]

Single-Ingredient, Immediate-Release Drug Products Containing Oxycodone for Oral Administration and Labeled for Human Use; Enforcement Action Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing its intention to take enforcement action against all unapproved single-ingredient, immediate-release drug products that contain oxycodone hydrochloride (hereinafter "oxycodone") for oral administration and are labeled for human use, and persons who manufacture or cause the manufacture or distribution of such products in interstate commerce. Unapproved oxycodone drug products have been implicated in reports of medication errors causing serious adverse events. In addition, some of these products omit important warning information in their labeling. Single-ingredient, immediate-release oxycodone drug products are new drugs that require approved new drug applications (NDAs) or abbreviated new drug applications (ANDAs) to be legally marketed.

DATES: This notice is effective July 6, 2012. For information about enforcement dates, see **SUPPLEMENTARY INFORMATION**, section IV.

ADDRESSES: All communications in response to this notice should be identified with Docket No. FDA–2012–N–0563 and directed to the appropriate office listed in this document.

Applications under section 505(b) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(b)): Division of Anesthesia, Analgesia, and Addiction Products, Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993–0002.

Applications under section 505(j) of the FD&C Act: Office of Generic Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855.

All other communications: Astrid Lopez-Goldberg, Office of Unapproved Drugs and Labeling Compliance, Division of Prescription Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5368, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Astrid Lopez-Goldberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5368, Silver Spring, MD 20993–0002, 301–796–3485, *astrid.lopezgoldberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Oxycodone is an opioid drug that is primarily used as an analgesic to relieve

moderate to severe pain. Side effects are similar among all opioids and include light-headedness, dizziness, drowsiness, headache, fatigue, sedation, sweating, nausea, vomiting, constipation, itching, and skin reactions. Serious adverse effects include respiratory depression, decreased blood pressure, coma, respiratory arrest, and death.

This notice covers all unapproved single-ingredient, immediate-release drug products containing oxycodone for oral administration (including tablets, capsules, and oral solutions) that are labeled for human use. Oxycodone is a schedule II narcotic under the Controlled Substances Act (21 U.S.C. 801, *et seq.*) There are FDA-approved single-ingredient, immediate-release oxycodone tablets, capsules, and oral solutions. FDA has approved a number of immediate-release oxycodone tablets, ranging in strength from 5 milligrams (mg) to 30 mg. These products are indicated for the management of moderate to severe pain where the use of an opioid analgesic is appropriate.

In October 2010, FDA approved NDA 200534 for a single-ingredient oxycodone capsule, 5 mg, for the management of moderate to severe acute and chronic pain where the use of an opioid analgesic is appropriate, and NDA 200535, oxycodone oral solution, 100 mg/5 milliliters (mL), for the management of moderate to severe acute and chronic pain in opioid-tolerant patients. In January 2012, FDA approved NDA 201194, oxycodone oral solution, 5 mg/5mL, for the management of moderate to severe pain where the use of an opioid analgesic is appropriate.

FDA is aware of unapproved single-ingredient oxycodone 5 mg capsules and unapproved single-ingredient oxycodone oral solutions in 5 mg/5 mL and 20 mg/mL strengths that are currently being manufactured and distributed. In 2009, the Agency sent warning letters to companies manufacturing unapproved single-ingredient, immediate-release tablets containing oxycodone (available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/SelectedEnforcementActionsonUnapprovedDrugs/ucm238675.htm).* This notice is issued under sections 502 and 505 of the FD&C Act and applies to any unapproved single-ingredient, immediate-release drug products containing oxycodone for oral administration and labeled for human use that are currently being manufactured or distributed, whether or not the drug products were the subject of a prior warning letter.

II. Safety Concerns With Unapproved New Drugs

Although many of the types of adverse events associated with approved and unapproved products are similar, there are additional risks associated with unapproved products because the quality, safety, and efficacy of unapproved formulations have not been demonstrated to FDA. For example, the ingredients and bioavailability of unapproved products have not been submitted for FDA review, nor has the Agency had the opportunity to assess the adequacy of their chemistry, manufacturing, and controls specifications before marketing. Additionally, FDA does not have the opportunity to review any changes to the formulation of unapproved products prior to implementation, or to review product names, to avoid look-alike and sound-alike names that may lead to medication errors. Finally, with unapproved products FDA does not have the opportunity to review their labeling, e.g., warnings, potential adverse experiences, and drug interactions, before marketing to help ensure safe use.

Unapproved new drug products containing oxycodone pose particular safety concerns because of their potential for addiction. Oxycodone is a derivative of opium, and, like all opioid products, drugs that contain oxycodone can produce euphoria (a sense of well-being), have the potential to be highly addictive, and are extremely popular drugs of abuse. The particular risks associated with unapproved oxycodone-containing products are illustrated by an unapproved oxycodone 20 mg/mL oral solution. FDA found that the INDICATIONS AND USAGE section of the labeling of this unapproved product omits critical information, i.e., that the product is indicated for opioid-tolerant patients. Such an omission increases the chance that the product will be inappropriately prescribed for a patient who is not opioid-tolerant, with the potential for respiratory depression, respiratory arrest, and death. FDA also found that the DOSAGE AND ADMINISTRATION section of the labeling for this unapproved product lacks information about how to prevent dosing errors and that the WARNINGS AND PRECAUTIONS section does not include information regarding risks of medication errors. In addition, this product does not include a Medication Guide (see 21 CFR part 208), which is required to be issued with the approved oxycodone 20 mg/mL oral solution (see *www.fda.gov/Drugs/DrugSafety/ucm085729.htm*).

Another example of an unapproved product lacking appropriate labeling is a single-ingredient oxycodone 5-mg capsule. The DOSAGE AND ADMINISTRATION section of the labeling omits critical information regarding individualization of the dosing regimen, initiation of therapy in opioid-naive patients, conversion to oral oxycodone hydrochloride, maintenance therapy, and cessation of therapy. This unapproved capsule's WARNINGS AND PRECAUTIONS section also fails to mention precautions for patients taking CYP3A4 (cytochrome P450 3A4) inhibitors or inducers.

FDA has received reports of medication errors associated with unapproved oxycodone products and the strength of the active ingredient. Two reports were cases of the wrong dose of unapproved oxycodone oral solution being administered to the patient. A 21-month-old patient received a prescription for oxycodone at a strength of 1 mg/mL, but the product dispensed and administered to the patient was an oxycodone 20 mg/mL formulation, resulting in respiratory failure secondary to opioid overdose. The patient was admitted to the emergency room and successfully resuscitated. The second case was of an 18-year-old patient who was prescribed oxycodone solution with the direction to administer one teaspoonful (5 mg) every 4 hours. However, a 20 mg/mL oxycodone oral solution was dispensed, resulting in a 20-fold overdose (100 mg oxycodone). The patient went into a coma with organ failure, was put on a ventilator, and was admitted to the intensive care unit. At the time of the report, the patient was able to speak but only with a limited vocabulary. These medication errors may have been due to the visual similarity of the container labels and carton labeling of the two product strengths. Because unapproved products circumvent the FDA drug approval process, the Agency cannot take steps before marketing to help ensure that the labels and labeling of multiple strengths by the same manufacturer are sufficiently differentiated to prevent such medication errors.

III. Legal Status of Products Identified in This Notice

FDA has reviewed the publicly available scientific literature for unapproved single-ingredient, immediate-release drug products containing oxycodone for oral administration and labeled for human use. In no case did FDA find literature

sufficient to support a determination that any of these products is generally recognized as safe and effective. Therefore, these products are "new drugs" within the meaning of section 201(p) of the FD&C Act (21 U.S.C. 321(p)), and they require approved NDAs or ANDAs to be legally marketed.

The unapproved drug products covered by this notice are labeled for prescription use. Prescription drugs are defined under section 503(b)(1)(A) of the FD&C Act (21 U.S.C. 353(b)(1)(A)) as drugs that, because of toxicity or other potentially harmful effect, are not safe to use except under the supervision of a practitioner licensed by law to administer such drugs. Because any drug product covered by this notice meets the definition of "prescription drug" in section 503(b)(1)(A), adequate directions cannot be written for it so that a layman can use the product safely for its intended uses (21 CFR 201.5). Consequently, it is misbranded under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) in that it fails to bear adequate directions for use. An approved prescription drug is exempt from the requirement in section 502(f)(1) that it bear adequate directions for use if, among other things, it bears the NDA-approved labeling (21 CFR 201.100(c)(2) and 201.115). Because the unapproved prescription drug products subject to this notice do not have approved applications with approved labeling, they fail to qualify for the exemptions to the requirement that they bear "adequate directions for use," and they are misbranded under section 502(f)(1).

IV. Notice of Intent To Take Enforcement Action

Although not required to do so by the Administrative Procedure Act, the FD&C Act (or any rules issued under its authority), or for any other legal reason, FDA is providing this notice to persons [1] who are marketing unapproved and misbranded single-ingredient, immediate-release drug products containing oxycodone for oral administration and labeled for human use. The Agency intends to take enforcement action against such products and those who manufacture them or cause them to be manufactured or shipped in interstate commerce.

Manufacturing or shipping the drug products covered by this notice can result in enforcement action, including seizure, injunction, or other judicial or administrative proceeding. Consistent with policies described in the Agency's guidance entitled "Marketed Unapproved Drugs—Compliance Policy Guide" (Marketed Unapproved Drugs CPG) (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM070290.pdf*), the Agency does not expect to issue a warning letter or any other further warning to firms marketing drug products covered by this notice before taking enforcement action. The Agency also reminds firms that, as stated in the Marketed Unapproved Drugs CPG, any unapproved drug marketed without a required approved application is subject to Agency enforcement action at any time. The issuance of this notice does not in any way obligate the Agency to issue similar notices (or any notice) in the future regarding marketed unapproved drugs. As described in the Marketed Unapproved Drugs CPG, the Agency may, at its discretion, identify a period of time during which the Agency does not intend to initiate an enforcement action against a currently marketed unapproved drug solely on the grounds that it lacks an approved application under section 505 of the FD&C Act. With respect to drug products covered by this notice, the Agency intends to exercise its enforcement discretion for only a limited period of time because there are safety issues with respect to the products covered by this notice and there are FDA-approved products to meet patient needs. Therefore, the Agency intends to implement this notice as explained in this document.

For the effective date of this notice, see the **DATES** section of this document. Any drug product covered by this notice that a company (including a manufacturer or distributor) began marketing after September 19, 2011, is subject to immediate enforcement action. For products covered by this notice that a company (including a manufacturer or distributor) began marketing in the United States on or before September 19, 2011, FDA intends to take enforcement action against any such product that is not listed with the Agency in full compliance with section 510 of the FD&C Act (21 U.S.C. 360) before July 5, 2012, and is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after July 5, 2012. FDA also intends to take enforcement action against any drug product covered by this notice that is listed with FDA in full compliance with section 510 of the FD&C Act but is not being commercially used or sold [2] in the United States before July 5, 2012, and that is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after July 6, 2012.

However, for drug products covered by this notice that a company (including a manufacturer or distributor) began marketing in the United States on or before September 19, 2011, are listed with FDA in full compliance with section 510 of the FD&C Act before July 5, 2012 ("currently marketed and listed"), and are manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after July 6, 2012, the Agency intends to exercise its enforcement discretion as follows: FDA intends to initiate enforcement action regarding any such currently marketed and listed product that is manufactured on or after August 20, 2012, or that is shipped on or after October 4, 2012. Further, FDA intends to take enforcement action against any person who manufactures or ships such products after these dates. Any person who has submitted or submits an application for a drug product covered by this notice but has not received approval must comply with this notice.

The Agency, however, does not intend to exercise its enforcement discretion as outlined previously if (1) a manufacturer or distributor of drug products covered by this notice is violating other provisions of the FD&C Act, including, but not limited to, violations related to FDA's current good manufacturing practices, adverse event reporting, labeling, or misbranding requirements other than those identified in this notice, or (2) it appears that a firm, in response to this notice, increases its manufacture or interstate shipment of drug products covered by this notice above its usual volume during these periods.[3]

Nothing in this notice, including FDA's intent to exercise its enforcement

[1] The term "person" includes individuals, partnerships, corporations, and associations (21 U.S.C. 321(e)).

[2] For purposes of this notice, the phrase "commercially used or sold" means that the product has been used in a business or activity involving retail or wholesale marketing and/or sale.

[3] If FDA finds it necessary to take enforcement action against a product covered by this notice, the Agency may take action relating to all of the defendant's other violations of the FD&C Act at the same time. For example, if a firm continues to manufacture or market a product covered by this notice after the applicable enforcement date has passed, to preserve limited Agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time (see, e.g., *United States* v. *Sage Pharmaceuticals*, 210 F.3d 475, 479–480 (5th Cir. 2000) (permitting the Agency to combine all violations of the FD&C Act in one proceeding, rather than taking action against multiple violations of the FD&C Act in "piecemeal fashion")).

discretion, alters any person's liability or obligations in any other enforcement action, or precludes the Agency from initiating or proceeding with enforcement action in connection with any other alleged violation of the FD&C Act, whether or not related to a drug product covered by this notice. Similarly, a person who is or becomes enjoined from marketing unapproved or misbranded drugs may not resume marketing of such products based on FDA's exercise of enforcement discretion as described in this notice.

Drug manufacturers and distributors should be aware that the Agency is exercising its enforcement discretion as described previously only in regard to drug products covered by this notice that are marketed under an NDC number listed with the Agency in full compliance with section 510 of the FD&C Act before July 5, 2012. As previously stated, drug products covered by this notice that are currently marketed but not listed with the Agency on the date of this notice must, as of the effective date of this notice, have approved applications before their shipment in interstate commerce. Moreover, any person or firm that has submitted or submits an application but has yet to receive approval for such products is still responsible for full compliance with this notice.

V. Discontinued Products

Some firms may have previously discontinued manufacturing or distributing products covered by this notice without removing them from the listing of their products under section 510(j) of the FD&C Act. Other firms may discontinue manufacturing or distributing listed products in response to this notice. Firms that wish to notify the Agency of product discontinuation should send a letter signed by the firm's chief executive officer and fully identifying the discontinued product(s), including the product NDC number(s), and stating that the manufacturing and/or distribution of the product(s) has (have) been discontinued. The letter should be sent electronically to Astrid Lopez-Goldberg (see **ADDRESSES**). Firms should also electronically update the listing of their products under section 510(j) of the FD&C Act to reflect discontinuation of unapproved products covered by this notice. FDA plans to rely on its existing records, including its drug listing records, the results of any subsequent inspections, or other available information when it targets violations for enforcement action.

VI. Reformulated Products

In addition, FDA cautions firms against reformulating their products into unapproved new drugs without oxycodone and marketing them under the same name or substantially the same name (including a new name that contains the old name) in anticipation of an enforcement action based on this notice. As stated in the Marketed Unapproved Drugs CPG, FDA intends to give higher priority to enforcement actions involving unapproved drugs that are reformulated to evade an anticipated FDA enforcement action. In addition, reformulated products marketed under a name previously identified with a different active ingredient have the potential to confuse health care practitioners and harm patients.

Dated: June 21, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–16475 Filed 7–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0603]

Assessment of the Program for Enhanced Review Transparency and Communication for New Molecular Entity New Drug Applications and Original Biologics License Applications in Prescription Drug User Fee Act V; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the statement of work for an assessment of the Program for Enhanced Review Transparency and Communication for New Molecular Entity (NME) New Drug Applications (NDAs) and Original Biologics License Applications (BLAs) (the Program). The Program is part of the FDA performance commitments under the proposed fifth authorization of the Prescription Drug User Fee Act (PDUFA), which, if enacted into law, will allow FDA to collect user fees for the review of human drug and biologics applications for fiscal years (FYs) 2013–2017. The Program is described in detail in section II.B of the document entitled "PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017." [1] The Program will be evaluated by an independent contractor in an interim and final assessment. As part of the FDA performance commitment, FDA is providing a period of 30 days for public comment on the statement of work before letting the contract for the assessment.

DATES: Submit electronic or written comments by August 6, 2012.

ADDRESSES: Submit electronic comments 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. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Andrea Tan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1173, Silver Spring, MD 20993–0002, 301–796–7641, *Andrea.Tan@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The timely review of the safety and effectiveness of new drugs and biologics is central to FDA's mission to protect and promote the public health. Before the enactment of PDUFA in 1992, FDA's drug review process was relatively slow and not very predictable compared to other countries. As a result of concerns expressed by industry, patients, and other stakeholders at the time, Congress enacted PDUFA, which provided the added funds through user fees that enabled FDA to hire additional reviewers and support staff and upgrade its information technology systems. In return for these additional resources, FDA agreed to certain review performance goals, such as completing reviews of NDAs and BLAs and taking regulatory actions on them in predictable timeframes. These changes revolutionized the drug approval process in the United States and enabled FDA to speed the application review process for new drugs and biologics without compromising the Agency's high standards for demonstration of safety, efficacy, and quality of new drugs and biologics prior to approval.

PDUFA provides FDA with a source of stable, consistent funding that has made possible our efforts to focus on

[1] The "*PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017*" is available on the Internet at *http://www.fda.gov/downloads/For Industry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf*.

promoting innovative therapies and helping to bring to market critical products for patients. When PDUFA was originally authorized in 1992, it had a 5-year term. The PDUFA program has been reauthorized every 5 years, with the most recent reauthorization occurring in 2007 for FYs 2008–2012. As directed by Congress in preparing for reauthorization of PDUFA for a new 5-year period, FDA conducted negotiations with regulated industry and conducted regular consultations with public stakeholders, including patient advocates, consumer advocates, and health care professionals between July 2010 and May 2011. Following these discussions, related public meetings, and Agency requests for public comment, FDA transmitted proposed PDUFA V recommendations to Congress for FYs 2013–2017 on January 13, 2012. If enacted into law, FDA's proposed PDUFA V recommendations will include an FDA commitment to implement a new review program for NME NDAs and original BLAs to enhance review transparency and communication between FDA and applicants on these complex applications.

II. PDUFA V NME NDA and Original BLA Review Program

FDA's existing review performance goals for priority and standard applications, 6 and 10 months respectively, were established more than 15 years ago. Since that time, additional requirements in the drug review process and scientific advances in drug development have made those goals increasingly challenging to meet, particularly for more complex applications like NME NDAs and original BLAs that generally are discussed in an FDA advisory committee meeting. FDA further recognizes that increasing communication between the Agency and applicants during FDA's review has the potential to increase efficiency in the review process.

To promote greater transparency and improve communication between the FDA review team and the applicant, FDA has proposed a new review model for NME NDAs and original BLAs in PDUFA V. The Program provides opportunities for increased communication by building in mid-cycle communications and late-cycle meetings between FDA and applicants. To accommodate this increased interaction during regulatory review and to address the need for additional time to review these complex applications, FDA's review clock will begin after the 60-day administrative filing review period for applications reviewed under the Program. The Program will apply to all NME NDAs and original BLAs received from October 1, 2012, through September 30, 2017. The goal of the Program is to improve the efficiency and effectiveness of the first-cycle review process by increasing communication with sponsors before application submission to improve the quality and completeness of submissions, and by increasing communications during application review. This will provide sponsors with opportunities to clarify previous submissions and provide additional data and analyses that are readily available, potentially avoiding the need for an additional review cycle when FDA's concerns about an application can be promptly resolved, but without compromising FDA's traditional high standards for approval. An efficient and effective review process that allows for timely responses to FDA questions can help ensure timely patient access to safe, effective, and high quality new drugs and biologics. To understand the Program's effect on the review of these applications, interim and final assessments by an independent contractor are key components of the Program. The performance commitments state that the statement of work for this effort will be published for public comment before beginning the assessment (section II.B). Because the assessment needs to commence at the beginning of PDUFA V on October 1, 2012, if the program is reauthorized, FDA must publish the statement of work for public comment in advance of that reauthorization to be able to begin the assessment on October 1, 2012. Accordingly, FDA is seeking public comment now on the proposed statement of work for the assessment of the Program, available at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm304793.pdf.*

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–16529 Filed 7–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Exposing T Cells to Fas Ligand (FasL)-Fas Receptor (FasR) Antagonists Withholds Differentiation and Increases Expansion Making T Cells More Suitable for Use in Cancer Immunotherapy

Description of Technology: NIH scientists have developed methods to make a better immunotherapy by exposing T cells to Fas ligand (FasL) or Fas receptor (FasR) antagonists and agonists. Researchers have found that FasL–FasR antagonists suppress T cell differentiation leaving them in a naïve state. These T cells are a more ideal cell type for adoptive cell transfer therapies since they have not exhausted their effector functions and demonstrate greater proliferation, enhanced persistence and survival, and better activity against their target antigen when infused in vivo to treat cancer. Also, the prevention of T cell differentiation/effector function in vivo

has implications for autoimmune diseases and syndromes. FasL–FasR agonists enhance T cell differentiation towards more effector-like cells. Enhancing the differentiation of T cells is expected to be useful in treating cell proliferation disorders, such as leukemias, lymphomas, or Wiskott-Aldrich syndrome.

FasL (or cluster of differentiation 95L) is a transmembrane protein in the tumor necrosis factor (TNF) family. FasR (or apoptosis antigen 1, CD95, or TNF receptor superfamily member 6) is a transmembrane protein belonging to the TNF receptor/nerve growth factor receptor superfamily. Normally, when FasL binds to FasR, a cell death signal is triggered in the cell. Antagonists of FasL–FasR interaction may include caspase inhibitors, mutated FasL/FasR, RNAi, or FasL/FasR antibodies. Agonists may include FasL/FasR encoding nucleotides.

Potential Commercial Applications

- Immunotherapy for cancer and other diseases or disorders using FasL/FasR antagonist exposed T cells.
- Methods for generating better T cells to utilize for infusion into patients in adoptive cell transfer therapies.
- Therapeutic to prevent T cell mediated toxicity in vivo (i.e. autoimmunity like lupus, Crohn's disease, MS, vitiligo, etc.).
- Components of a combination therapy to increase or suppress T cell differentiation and activity in patients.

Competitive Advantages

- Some patients do not respond to T cell immunotherapy due to lack of cell persistence, survival, or activity or other reasons. Administering a FasL/FasR antagonist to a patient's T cells before immunotherapy should increase the success rate of treatment by increasing the persistence and survival of the infused cells.
- Differentiation and effector function of T cells can be suppressed by an antibody (molecular product) rather than a drug (chemical product) like rapamycin.

Development Stage

- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

Inventors: Anthony J. Leonardi, Christopher A. Klebanoff, Luca Gattinoni, Nicholas P. Restifo (all of NCI).

Intellectual Property: HHS Reference No. E–142–2012/0—U.S. Provisional Application No. 61/623,733 filed 13 Apr 2012.

Related Technology: HHS Reference No. E–069–2010/0—PCT Application No. PCT/US2011/63375 filed 08 Dec 2010.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov*.

Collaborative Research Opportunity: The Surgery Branch of the NCI is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the prevention of T cell differentiation and effector function as part of Immunotherapy. For collaboration opportunities, please contact Steven A. Rosenberg, M.D., Ph.D. at *sar@nih.gov*.

Benign Tissue or Malignant Tumors? Using CpG Dinucleotide Methylation Patterns To Diagnose Cancer in the Adrenal Glands and Adrenal Cortex

Description of Technology: Scientists at the National Institutes of Health (NIH) have developed new methods to distinguish malignant adrenocortical tumors from benign tumors and normal tissue in the adrenal glands/cortex using the methylation patterns of cytosine-phosphate-guanine dinucleotide (CpG) sequences. A biopsy or other noninvasive means of tissue or fluid collection to obtain patient nucleic acid can allow clinicians to test an individual's CpG methylation patterns to diagnose if the individual's sample is malignant and if a malignancy is a primary or metastatic adrenocortical tumor. Different CpG methylation patterns comparing normal/benign and malignant tissues may also serve as target sites for developing adrenocortical cancer therapies. Genes where increased CpG methylation is predictive of malignancy include KCTD12, KIRREL, SYNGR1, and NTGN2, as well as other secondary sequences.

Adrenal glands sit atop the kidneys and release stress response hormones. The CpG methylation patterns of 5-methylcytosines at CpG sites can alter gene expression, which can impact if a tumor will develop benign or malignant properties and influence its metastatic potential. Effective diagnosis of these tumors will improve adrenal cancer therapy and help avoid unnecessary surgery or chemotherapy for patients with benign tumors.

Potential Commercial Applications

- Nucleic acid-based diagnostic tests or kits to identify malignant adrenocortical tumors and distinguish them from common benign tumors or normal adrenocortical tissue.
- Identify CpG methylation sequences and patterns that could serve as targets for nonsurgical therapeutic interventions against adrenocortical tumors.
- Companion diagnostic test for candidate demethylation agent therapies for treating adrenocortical malignancies.

Competitive Advantages

- Removal of adrenal malignancies is currently the only cure, but most patients are not candidates for surgery. Benign adrenal tumors are common, but treated by clinicians as a precaution, mainly with harsh chemotherapy. Now, malignant adrenocortical tumors can be differentiated from benign tumors, so that individuals with benign tumors are not treated unnecessarily.
- A minimally invasive biopsy or tissue collection to measure DNA methylation could avoid unnecessary invasive surgery/harsh chemotherapy and lead to more assured treatment of malignant tumors.

Development Stage

- Pre-clinical.
- In vitro data available.

Inventors: Electron Kebebew, Nesrin S. Rechache, Paul S. Meltzer, Yonghong Wang (all of NCI).

Publication: Rechache N, *et al.* DNA methylation profiling identifies global methylation differences and markers of adrenocortical tumors. J Clin Endocrinol Metab. 2012 Jun;97(6):E1004–13. [PMID 22472567]

Intellectual Property: HHS Reference No. E–135–2012/0—U.S. Provisional Application No. 61/615,869 filed 26 Mar 2012.

Related Technology: HHS Reference No. E–026–2011/0—PCT Application No. PCT/US2011/040648 filed 16 Jun 2011.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov*.

Mouse-Derived T Cell Receptor for Use in Immunotherapy That Recognizes NY–ESO–1, a Cancer Testis Antigen Expressed by Many Human Cancers

Description of Technology: Scientists at the National Institutes of Health have developed a T cell receptor (TCR) derived from mouse T cells (i.e. murine TCR) that can be expressed in human T cells to recognize the cancer testis antigen (CTA), NY–ESO–1, with high specificity. This anti-NY–ESO–1 TCR has murine variable regions that recognize the NY–ESO–1 epitope and murine constant regions. The inventors performed in vitro studies comparing this murine NY–ESO–1 TCR with a previously developed human NY–ESO–1 TCR counterpart, which yielded promising clinical outcomes in patients with a variety of cancers. The murine

TCR functioned similarly to the human counterpart in their ability to recognize and react to NY–ESO–1 tumor targets.

NY–ESO–1 is a CTA, which is expressed only on tumor cells and germline cells of the testis and placenta. CTAs are ideal targets for developing cancer immunotherapeutics, such as anti-CTA TCRs, since these TCRs are expected to target cancer cells without harming normal tissues and thereby minimize the harsh side effects associated with other types of cancer treatment. NY–ESO–1 is expressed on a wide variety of cancers, including but not limited to breast, lung, prostate, thyroid, and ovarian cancers, melanoma, and synovial sarcomas, so this technology should be applicable in adoptive cell transfer therapies for many types of cancer.

Potential Commercial Applications

- Personalized immunotherapy with high probability for mediating tumor regression in patients with a variety of cancers expressing NY–ESO–1.
- Component of a combination immunotherapy regimen consisting of a variety of immune receptors and other immune molecules (cytokines, etc.) targeting multiple tumor antigens.
- A research tool to investigate the progression and metastasis of NY–ESO–1 expressing cancers in mouse models.
- An in vitro diagnostic tool to identify cancer tissues that express the NY–ESO–1 cancer testis antigen.

Competitive Advantages

- Predicted high probability of clinical success: Murine TCRs from this invention exhibited similar in vitro properties to a human NY–ESO–1 TCR that has mediated tumor regression in many patients in a recent clinical trial.
- Lower toxicity than other cancer treatments: NY–ESO–1 is overexpressed on a wide variety of cancers, but not on any normal human tissues that could be reactive with an engineered TCR. TCRs engineered to recognize NY–ESO–1 could be utilized as an immunotherapy to treat many different cancer types.

Development Stage

- Pre-clinical.
- In vitro data available.

Inventors: Maria R. Parkhurst, Richard A. Morgan, Steven A. Rosenberg (all of NCI).

Intellectual Property: HHS Reference No. E–105–2012/0—U.S. Provisional Patent Application No. 61/650,020 filed 22 May 2012.

Related Technologies

- HHS Reference No. E–304–2006/0.
- HHS Reference No. E–312–2007/1.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Surgery Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this murine NY–ESO–1 reactive TCR. For collaboration opportunities, please contact Steven A. Rosenberg, M.D., Ph.D. at *sar@nih.gov.*

Antagonists of Hyaluronan Signaling for Treatment of Airway Inflammation and Hyperresponsiveness

Description of Technology: Airway inflammation and hyperresponsiveness are hallmarks of airway disease. Investigators at NIEHS identified a new class of compounds that can block hyaluronan signaling and inhibit airway hyperresponsiveness and inflammation. Airway diseases, such as asthma and chronic obstructive airway disease, affect tens of millions of patients worldwide, and are chronic diseases with limited options for treatment (bronchodilators and inhaled steroids are the two classes of drugs currently in common use). Therefore, a novel class of treatment agents could have significant public health and market impact.

Potential Commercial Applications: Treatment of Airway Inflammation and Hyperresponsiveness.

Competitive Advantages: Potentially cost-effective treatment for widespread conditions.

Development Stage: In vitro data available.

Inventors: Stavros Garantziotis (NIEHS), John W. Hollingsworth, Bryan P. Toole, Jian Liu.

Intellectual Property: HHS Reference No. E–080–2012/0—U.S. Provisional Application No. 61/647,101 filed 15 May 2012.

Licensing Contact: Jaime M. Greene, M.S.; 301–435–5559; *greenejaime@mail.nih.gov.*

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the use of hyaluronan antagonists to treat chronic respiratory diseases. For collaboration opportunities, please contact Elizabeth M. Denholm, Ph.D. at *denholme@niehs.nih.gov.*

Individualized Cancer Therapy That Suppresses Tumor Progression and Metastasis Through Decreased Expression of TGF-Beta Receptor II in Bone Marrow Derived Cells

Description of Technology: Scientists at the NIH have developed a method of suppressing tumor progression and metastasis by targeting a pathway. This novel treatment method is an individualized therapy that first screens patients to determine if they are a candidate for the treatment, and then utilizes their own altered bone marrow to inhibit tumor progression.

Tumor inhibition is achieved through decreased expression of TGF-beta receptor II (TGFβ r2) in bone marrow derived myeloid cells, which is essential in tumor metastasis. The inventors have devised a patient selection method whereby the patient's blood is drawn and screened for TGFβ r2 expression, and those patients with above normal expression are candidates for treatment. After candidate screening the patient's bone marrow is harvested and divided into two parts: One part for cell culture and the other for storage and later use. The patient's cell culture bone marrow is treated to remove TGFβ r2 in myeloid cells through either virus, non viral particle, or nanoparticle. The patient is treated with total body radiation and then receives an infusion of the treated cell culture bone marrow. After tumor metastasis is suppressed, the altered bone marrow is removed, and the stored bone marrow is returned to the patient.

Potential Commercial Applications

- Novel immunotherapy for cancer.
- Treatment method to suppress tumor metastasis in patients overexpressing TGFβ r2 in myeloid cells.
- TGFβ r2 RNAi with specific myeloid cell promoters delivered by virus, non viral particle, or nanoparticle.

Competitive Advantages

- Specifically targets myeloid cells and not other host cells.
- Individualized therapy.
- Patient selection process; treatment is specific to eligible patients reducing cost.

Development Stage

- In vitro data available.
- In vivo data available (animal).

Inventor: Li Yang (NCI).

Publication: Abrogation of transforming growth factor β signaling in myeloid cells significantly inhibit tumor progression and metastasis: submitted.

Intellectual Property: HHS Reference No. E–151–2011/0—U.S. Patent Application No. 61/525,025 filed 18 August 2011.

Licensing Contact: Sabarni Chatterjee, Ph.D., MBA; 301–435–5587; *chatterjeesa@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize technologies including but not limited to RNAi viral particle or nanoparticle, or miRNA. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov.*

Dated: June 29, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–16500 Filed 7–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Immunotoxicity Studies for the National Toxicology Program.

Date: August 2, 2012.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30 Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–16497 Filed 7–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of the Citrus Flavanones Hesperetin, Hesperidin, and Naringenin in Nutrition for Endothelial Function, Vascular Health, Diabetes, and Insulin Resistance

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to BioActor B.V., a company having a place of business in Maastricht, Netherlands, to practice the inventions embodied in U.S. Provisional Patent Application No. 61/369,229, filed July 30, 2010 (HHS Ref. No. E–148–2010/0–US–01) and PCT Patent Application No. PCT/US2011/045898, filed July 29, 2011 (HHS Ref. No. E–148–2010/0–PCT–02), both entitled "Treatment of Metabolic Syndrome and Insulin Resistance with Citrus Flavanones." The patent rights in these inventions have been assigned to the United States of America. The prospective exclusive license territory may be "worldwide", and the field of use may be limited to "hesperidin, naringenin, and any derivatives thereof for use in nutrition relating to endothelial function, vascular health, diabetes, and insulin resistance, wherein the Licensed Products are marketed under an approved Health Claim or GRAS designation from the FDA, under an approved Health Claim or Novel Food designation from the EFSA, or a foreign regulatory equivalent of the above."

DATE: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before August 6, 2012 will be considered.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the patent application(s), inquiries, and comments relating to the contemplated exclusive license should be directed to: Tara L. Kirby, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4426; Facsimile: (301) 402–0220; Email: *tarak@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: Hesperidin is a flavonoid compound found in citrus fruits. Large epidemiological studies have linked increased consumption of flavonoid-rich foods, such as citrus, with reduced cardiovascular morbidity and mortality. Investigators from the National Center for Complementary and Alternative Medicine have demonstrated that administration of oral hesperidin to patients with metabolic syndrome attenuates biomarkers of inflammation and improves blood vessel relaxation, lipid cholesterol profiles, and insulin sensitivity when compared to controls. Thus, hesperidin and its active aglycone form, hesperetin, may be effective agents for the treatment of diabetes, obesity, metabolic syndrome, dyslipidemias, and their cardiovascular complications including hypertension, atherosclerosis, coronary heart disease, and stroke. This technology discloses methods for using a hesperetin or hesperidin composition to treat metabolic syndrome and insulin resistance. Also described is the use of the related citrus polyphenol, naringenin.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Only applications for a license in the field of use set forth in this notice and filed in response to this notice will be treated as objections to the grant of the

contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 29, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–16499 Filed 7–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Treatment Episode Data Set (TEDS)—New

The Treatment Episode Data Set (TEDS) is a compilation of client-level substance abuse treatment admission and discharge data submitted by States on clients treated in facilities that receive State funds. TEDS is related to SAMHSA's Drug and Alcohol Services Information System (DASIS) (now the Behavioral Health Services Information System (BHSIS)), and was previously approved as part of the DASIS data collection (OMB No. 0930–0106). SAMHSA is now requesting OMB approval for TEDS separately from the other DASIS/BHSIS activities.

The BHSIS data collections involve primarily facility-level data systems, including the Inventory of Behavioral Health Services (I–BHS), which is an inventory of substance abuse and mental health treatment facilities, the National Survey of Substance Abuse Treatment Services (N–SSATS), and the National Mental Health Services Survey (NMHSS, OMB No. 0930–0119). The N–SSATS and NMHSS are census surveys of treatment facilities. In contrast, TEDS is a client-level data system that collects admission and discharge records from state substance abuse agencies. Therefore, SAMHSA is requesting OMB approval for the TEDS client-level data collection separately from the BHSIS facility-related activities.

TEDS data are collected to obtain information on the number of admissions and discharges at publicly-funded substance abuse treatment facilities and on the characteristics of clients receiving services at those facilities. TEDS also monitors trends in the demographic and substance use characteristics of treatment admissions. In addition, several of the data elements used to calculate performance measures for the Substance Abuse Prevention and Treatment (SAPT) Block Grant are collected in TEDS.

This request for OMB approval includes a request to continue the collection of TEDS client-level admissions and discharge data. Most states collect the TEDS data elements from their treatment providers for their own administrative purposes and are able to submit a crossed-walked extract of their data to TEDS. No significant changes are expected in the TEDS collection (other than recording the TEDS burden hours separately from the DASIS/BHSIS burden hours.)

Estimated annual burden for the TEDS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
STATES:				
TEDS Admission Data	52	4	6.25	1,300
TEDS Discharge Data	52	4	8.25	1,716
TEDS Crosswalks	5	1	10	50
Total	52			3,066

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 or email a copy to *summer.king@samhsa.hhs.gov*. Written comments must be received before 60 days after the date of the publication in the **Federal Register**.

Cathy J. Friedman,

Public Health Analyst.

[FR Doc. 2012–16558 Filed 7–5–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–929, Extension, Without Change, of a Currently Approved Information Collection; Correction

ACTION: 60-Day Notice of Information Collection Under Review: Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant; OMB Control No. 1615–0106; Correction.

On June 27, 2012 the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) published a 60-day information collection notice in the **Federal Register** at 77 FR 38308, allowing for 60-day public comment period in connection with an information collection request it will be submitting to the Office of Management and Budget (OMB) for review and clearance in accordance

with the Paperwork Reduction Act of 1995.

In the 60-day information collection notice, USCIS inadvertently indicated in the heading Agency Information Collection Activities section and in the Overview of This Collection, section (2), *Title of the Form/Collection,* that the title of the collection instrument was "H–2 Petitioner's Employment Related or Fee Related Notification."

USCIS is now correcting that notice to read that everywhere in the notice, where the "H–2 Petitioner's Employment Related or Fee Related Notification" title appeared it should read "Petition for Qualifying Family Member of a U–1 Nonimmigrant". This correction does not change the August 27, 2012, commenting period closing date.

Dated: June 29, 2012.

Laura Dawkins,

Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–16494 Filed 7–5–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Inspectorate America Corporation as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, Plot 49 Castle Coakley St. Christiansted, St. Croix, VI 00820, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on September 13, 2011. The next triennial inspection date will be scheduled for September 2014.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: June 26, 2012.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2012–16534 Filed 7–5–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–26]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; ENERGY: Mr. Mark C. Price, Office of Engineering & Construction Management, OECM MA–50, 4B122, 1000 Independence Ave. NW., Washington, DC, 20585, (202) 586–5422; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; (These are not toll-free numbers).

Dated: June 28, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 07/06/2012

Suitable/Available Properties

Building

Kansas

Sun Dance Park
31051 Melvern Lake Pkwy
Melvern KS 66510
Landholding Agency: COE
Property Number: 31201220011
Status: Underutilized
Comments: 133 sf.; bathroom; poor to fair conditions;

Missouri

St. Louis District
Wappapello Lake Project Office
Wappapello MO 63966
Landholding Agency: COE
Property Number: 31201220014
Status: Unutilized
Comments: 376.69 sf.; comfort station; significant structural issues; need repairs

New Mexico

USDA/NRCS Grants Field Office
117 N. Silver
Grants NM 87020
Landholding Agency: GSA
Property Number: 54201220011
Status: Surplus
GSA Number: 7–A–NM–0604
Comments: 817 sf. for office bldg.; 2,714 sf. for storage; good conditions; office/storage; access will be provided by NRCS employees located in Grants, NM

Oklahoma

Dam Site North/Ranger Creek
8568 State Hwy 251A
Ft. Gibson OK 74434
Landholding Agency: COE
Property Number: 31201220016
Status: Unutilized
Comments: Off-site removal only; 36 sf.; pump house; fair conditions; access road is gated; unlocked by Ft. Gibson Lake personnel during regular business hrs.

Washington

Residence, Central Ferry Park
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220008
Status: Unutilized
Comments: Off-site removal only; 1,500 sf.; residence; good conditions; park closed for over 14 months; access easement is required through a real estate instrument

Restroom, Central Ferry Park
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220009
Status: Unutilized
Comments: Off-site removal only; 2,457 sf.; restroom; good conditions; park closed for over 14 months; access easement is required through a real estate instrument

Restroom, Central Ferry Park
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220010
Status: Unutilized
Directions: Boat Ramp Area
Comments: Off-site removal only; 420 sf.; restroom; good conditions; park closed for over 14 months; access easement is required through a real estate instrument

Restroom, Central Ferry Park
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220012
Status: Unutilized
Comments: Off-site removal only; 660 sf.; restroom; park closed for over 14 months; access easement is required through a real estate instrument

Restroom, Illia Dunes
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220013
Status: Unutilized
Comments: Off-site removal only; 220 sf.; restroom

Missouri

3 Structures
Bannister Federal Complex
Kansas City MO 64131
Landholding Agency: Energy
Property Number: 41201220001
Status: Excess
Directions: 33, 34, 35
Comments: Off-site removal only; 200 sf. each; personal shelters; still being utilized; arrangements to relocate can be made after Dec. 1, 2012

Oklahoma

Keystone Lake-Tract 1251A
Lake Ft. Gibson
Wagoner, OK
Landholding Agency: COE
Property Number: 31201220015
Status: Unutilized
Comments: Landlocked; no established rights or means of entry; crossing onto privately-owned property is prohibited by owners
Reasons: Not accessible by road

[FR Doc. 2012–16459 Filed 7–5–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW0300.L51100000.GN0000.LVEMF 1200880 241A; 12–08807; MO# 4500034712; TAS: 14X5017]

Notice of Availability of the Final Environmental Impact Statement for the Hycroft Mine Expansion, Humboldt and Pershing Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Winnemucca District, Black Rock Field Office, Winnemucca, Nevada, has prepared a Final Environmental Impact Statement (FEIS) for the Hycroft Mine Expansion and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days of the date that the Environmental Protection Agency publishes their notice in the **Federal Register**.

ADDRESSES: Copies of the Hycroft Mine Expansion FEIS are available for public inspection at the Bureau of Land Management, Winnemucca District Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada. Interested persons may also review the FEIS on the Internet at *www.blm.gov/nv/st/en/fo/wfo/blm_information/nepa0.html.*

FOR FURTHER INFORMATION CONTACT: For further information contact Kathleen Rehberg, Project Lead, telephone (775)

623–1500; address 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445; email *wfoweb@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: Hycroft Resources Development Inc., (HRDI) proposes to expand mining activities at the existing Hycroft Mine on BLM-managed public land and on private land in Humboldt and Pershing counties, approximately 55 miles west of Winnemucca, Nevada, on the west flank of the Kamma Mountains. HRDI submitted an amended Plan of Operations to the BLM for approval, which proposes to expand the existing project boundary of 8,858 acres an additional 5,895 acres for a total project area of approximately 14,753 acres of public and private land. The Hycroft Mine employs approximately 205 workers. The proposed expansion would increase the mine life by approximately 12 years and increase employment to approximately 537 mine personnel.

The EIS analyzes the potential environmental impacts associated with the proposed expansion of 5,895 acres, which includes 2,172 acres of new surface disturbance. The existing open pit operation and associated disturbance would be increased by 2,057 acres from 1,371 acres of public land to 3,428 acres of public land. Disturbance on private land controlled by HRDI would be increased 115 acres from 1,692 acres to 1,807 acres. The additional acreage in the project boundary would be used for exploration.

The FEIS analyzes two alternatives; the Proposed Action and the No Action Alternative. Three other alternatives were considered then eliminated: Daylight Hours Operation, Modified Exploration Activities, and Different Waste Rock Dump and Heap Leach Pad Configurations. Based on the analysis in the EIS, the BLM has selected a Preferred Alternative. This Preferred Alternative is the alternative that best fulfills the agency's statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. The BLM has determined that the Preferred Alternative is the Proposed Action as outlined in Chapter 2 of the EIS, with the inclusion of the identified recommended mitigation measures to the Proposed Action as specified in Chapter 3 of the EIS.

The proposed project would expand the plan boundary and use of the entire project area for exploration; incorporate five rights-of-way; expand four existing open pits; backfill all or portions of three open pits; build a dispatch center and expand maintenance facilities; expand haul and secondary roads, waste rock facilities, and heap leach facilities; expand existing and construct two ready line and heavy equipment fueling areas; operate a portable crusher with conveyors at the south heap leach facility; construct, operate, and then close the south heap leach facility, Merrill-Crowe process plant, and solution ponds; relocate a segment of the Seven Troughs Road to bypass the south heap leach facility; expand the existing refinery and the Brimstone Merrill-Crowe plant; construct storm water diversions, install culverts, and other storm water controls; close the existing Class III landfill and construct a new Class III landfill; drill one potable water well and one process water well; relocate the existing Brimstone substation, upgrade the existing Crofoot substation, and extend power lines to new process areas; construct growth media stockpiles; and reclaim the project consistent with the proposed reclamation plan.

Under the No-Action Alternative the BLM would not approve the proposed plan of operations and there would be no expansion. HRDI would continue mining activities under previously approved plans of operation.

A Notice of Availability of the Draft EIS for the Proposed Hycroft Mine Expansion was published in the **Federal Register** on January 27, 2012. Seventy-nine comment letters were received during a 45-day period. The majority of the comments centered on the economic benefits of the project. There were five comment letters that included concerns on impacts to night skies, to public access roads, to water and air, to Native American sites and cultural resources, and on the proximity to the Black Rock Desert-High Rock Canyon-Emigrant Trails National Conservation Area. These comments were considered and addressed in Chapter 8 (Public Involvement) of the Final EIS. No changes to the analysis resulted in response to public comments, only the addition of clarifying text or minor corrections.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Gene Seidlitz,

District Manager.

[FR Doc. 2012–16565 Filed 7–5–12; 8.45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–TPS–9445; 2200–686]

Notice of Intent To Modify Schedule of Fees for Reviewing Historic Preservation Certification Applications; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; Correction.

SUMMARY: This notice corrects the address and fax number that the public should use in making comments on the changes to the fees the National Park Service (NPS) charges for reviewing Historic Preservation Certification Applications, and extends the period for making comments.

DATES: Written comments will be accepted until August 6, 2012.

ADDRESSES: You may submit comments by any of the following methods: email: *michael_auer@nps.gov;* fax: 202–371–1961, Attention: Michael Auer Mail: Michael Auer, Technical Preservation Services, National Park Service, 1201 "Eye" St. NW., Org Code 2255, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The notice published in Vol. 77, No. 121, Friday, June 22, 2012, page 37708, column 2, had incorrect information in the **ADDRESSES** section. This notice provides a corrected address for sending comments by mail and a corrected fax number. It also extends the period for making comments.

Dated: June 27, 2012.

Jonathan B. Jarvis,

Director, National Park Service.

[FR Doc. 2012–16278 Filed 7–5–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management (BOEM)

Final Programmatic Environmental Impact Statement (PEIS) for the Proposed Final Five-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2012–2017

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act, BOEM announces the availability of the OCS Oil and Gas Leasing Program 2012–2017 Final PEIS prepared by BOEM to support the Proposed Final 5-Year OCS Oil and Gas Leasing Program for 2012–2017.

FOR FURTHER INFORMATION CONTACT: Bureau of Ocean Energy Management, Headquarters, 381 Elden Street, Herndon, VA 20170; Attention: Mr. James F. Bennett, Chief of the Division of Environmental Assessment, telephone: (703) 787–1660.

SUPPLEMENTARY INFORMATION: This Final PEIS assesses the potential impacts of, and the scheduling for, proposed lease sales during the years 2012 to 2017 in six planning areas on the OCS. These areas are the Western, Central and Eastern Gulf of Mexico; Cook Inlet; the Beaufort Sea; and the Chukchi Sea. Federal regulations (40 CFR 1502.4(b)) recommend analyzing effects of broad programs within a single programmatic EIS.

EIS Availability: Persons interested in reviewing the Final PEIS for the Proposed Final 5-Year OCS Oil and Gas Leasing Program for 2012–2017, OCS EIS/EA BOEM 2012–030, can locate it on the Internet at *www.boem.gov/5-year/2012-2017* or you may contact Mr. James F. Bennett at the address listed above to request a hard copy or a CD/ROM version. Please specify if you wish a CD or paper copy. If neither is specified, a CD containing the Final PEIS will be forwarded.

Library Availability: The Final PEIS will also be available for review at libraries in states near the proposed lease sales. These libraries are listed at the BOEM Web site at *www.boem.gov/5-Year/2012-2017/libraries* or a list of libraries can be provided by contacting the contact person listed above.

Dated: June 20, 2012.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2012–16152 Filed 7–5–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Gulf of Mexico, Outer Continental Shelf (OCS), Western Planning Area (WPA) and Central Planning Area (CPA), Oil and Gas Lease Sales for 2012–2017

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability (NOA) of the Multisale Final Environmental Impact Statement (Multisale FEIS).

Authority: This NOA is published pursuant to the regulations (40 CFR 1503) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)).

SUMMARY: BOEM has prepared a Multisale FEIS on oil and gas lease sales tentatively scheduled during the period 2012–2017 in the WPA and CPA offshore the States of Texas, Louisiana, Mississippi, and Alabama. Under the *Proposed Final Outer Continental Shelf Oil and Gas Leasing Program: 2012–2017* (Five-Year Program), five annual areawide lease sales are scheduled for the WPA and five annual areawide lease sales are scheduled for the CPA. The proposed WPA lease sales are Lease Sale 229 in 2012, Lease Sale 233 in 2013, Lease Sale 238 in 2014, Lease Sale 246 in 2015, and Lease Sale 248 in 2016; the proposed CPA lease sales are Lease Sale 227 in 2013, Lease Sale 231 in 2014, Lease Sale 235 in 2015, Lease Sale 241 in 2016, and Lease Sale 247 in 2017.

SUPPLEMENTARY INFORMATION: The Multisale FEIS covers the five WPA and five CPA Gulf of Mexico lease sales scheduled for 2012–2017 in the Five-Year Program. The Multisale FEIS presents the baseline conditions and potential environmental effects of oil and natural gas leasing, exploration, development, and production in the WPA and CPA. In an effort to better understand the environmental impacts resulting from the *Deepwater Horizon* event, BOEM conducted an extensive search for information. BOEM surveyed scientific journals and available scientific data and information from academic institutions and Federal, state, and local agencies; and interviewed personnel from academic institutions and Federal, state, and local agencies. BOEM examined potential impacts of routine activities and accidental events, including a low-probability catastrophic event associated with a proposed lease sale and a proposed lease sale's incremental contribution to the cumulative impacts on environmental and socioeconomic resources. The oil and gas resource estimates and scenario information for the Multisale FEIS are presented as a range that would encompass the resources and activities estimated for a WPA and CPA proposed lease sale.

Final EIS Availability: To obtain a single, printed or CD–ROM copy of the Multisale FEIS, you may contact the Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). An electronic copy of the Multisale FEIS is available on BOEM's Internet Web site at *http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx*. Several libraries along the Gulf Coast have been sent copies of the Multisale FEIS. To find out which libraries have copies of the Multisale FEIS for review, you may contact BOEM's Public Information Office or visit BOEM's Internet Web site at *http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx#EIS Mailing List*.

FOR FURTHER INFORMATION CONTACT: For more information on the Multisale FEIS, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (MS 5410), New Orleans, Louisiana 70123–2394, or by email at *MultisaleEIS@BOEM.gov*. You may also contact Mr. Goeke by telephone at (504) 736–3233.

Dated: June 19, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–16149 Filed 7–5–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR Part 740, Surface Coal Mining and Reclamation Operations on Federal Lands. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029–0027.

DATES: Comments on the proposed information collection must be received by September 4, 2012, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease, at (202) 208–2783 or at the email address listed above.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands (1029–0027). OSM will request a 3-year term of approval for this information collection activity. 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. Responses are required to obtain a benefit for this collection.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029–0027.

Summary: Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits on Federal lands, and State Regulatory Authorities.

Total Annual Responses: 10.

Total Annual Burden Hours for Applicants: 645.

Total Annual Burden Hours for States: 280.

Total Annual Burden for All Respondents: 925.

Dated: June 29, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–16489 Filed 7–5–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–745]

Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof; Determination To Review a Final Initial Determination Finding a Violation of Section 337; Remand of the Investigation to the Administrative Law Judge

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on April 23, 2012, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation. The Commission has also determined to remand the investigation to the ALJ.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 23, 2010, based on a complaint filed by Motorola Mobility, Inc. of Libertyville, Illinois and General Instrument Corporation of Horsham, Pennsylvania (collectively "Motorola"). 75 FR 80843 (Dec. 23, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gaming and entertainment consoles, related software, and components thereof by reason of infringement of various claims of United States Patent Nos. 6,069,896 ("the '896 patent"); 7,162,094 ("the '094 patent"); 6,980,596 ("the '596 patent"); 5,357,571 ("the '571 patent"); and 5,319,712 ("the '712 patent"). The notice of investigation named Microsoft Corporation of Redmond, Washington ("Microsoft") as the sole respondent. The notice of investigation named the Office of Unfair Import Investigations ("OUII") as a party in the investigation. *See* 75 FR 80843 (Dec. 23, 2010). OUII, however, withdrew from participation in accordance with the Commission's Strategic Human Capital Plan. *See* 75 FR 80843 (2010); Letter from OUII to the Administrative Law Judge (Mar. 3, 2011).

On April 23, 2012, the ALJ issued his final ID, finding a violation of section 337 by Microsoft. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondent. The ALJ also found that the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)) has been satisfied. Regarding infringement, the ALJ found that Microsoft's accused products directly infringe claims 1 and 12 of the '896 patent; claims 7, 8, and 10 of the '094 patent; claim 2 of the '596 patent; and claims 12 and 13 of the '571 patent. *Id.* at 330. The ALJ, however,

found that the accused products do not infringe asserted claims 6, 8, and 17, of the '712 patent. With respect to invalidity, the ALJ found that the asserted claims of the '896, '094, '571, '712 patents and claim 2 of the '596 patent were not invalid. However, he found asserted claim 1 of the '596 patent invalid for anticipation. He also found that Microsoft failed to prevail on any of its equitable defenses and that Microsoft failed to establish that Motorola's alleged obligation to provide a license on reasonable and nondiscriminatory terms ("RAND") precluded a finding of violation of section 337. The ALJ finally concluded that an industry exists within the United States that practices the '896, '094, '571, '596 and '712 patents as required by 19 U.S.C. 337(a)(2).

On May 7, 2012, Microsoft filed a petition for review of the ID. That same day, Motorola filed a petition and contingent petition for review. On May 15, 2012, the parties filed responses to the various petitions and contingent petition for review.

On June 8, 2012, Microsoft filed a post-RD statement on the public interest pursuant to Commission Rule 201.50(a)(4). Several non-parties also filed public interest statements in response to the post-RD Commission Notice issued on May 15, 2012. *See* 77 FR 28621–22 (May 15, 2012).

On June 22, 2012, Microsoft filed a motion for partial termination of the investigation. Specifically, Microsoft moved for termination of the '094 and '596 patents from the investigation based on facts alleged in the motion.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety. Specifically, the Commission remands for the ALJ to (1) apply the Commission's opinion in *Certain Electronic Devices With Image Processing Systems, Components Thereof, and Associated Software*, Inv. No. 337–TA–724, Comm'n Op. (Dec. 21, 2011); (2) rule on Microsoft's motion for partial termination of the investigation filed June 22, 2012; and (3) set a new target date for completion of the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

By order of the Commission.

Issued: June 29, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–16482 Filed 7–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–710]

Certain Personal Data and Mobile Communications Devices and Related Software; Institution of a Formal Enforcement Proceeding; Denial of Request for Temporary Emergency Action

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding related to the December 19, 2011, limited exclusion order issued in the above-captioned investigation, and has denied the complainant's request for temporary emergency action.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on April 6, 2010, based on a complaint filed by Apple Inc., and its subsidiary NeXT Software, Inc., both of Cupertino, California (collectively, "Apple"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain personal data and mobile communications devices and related software. 75 FR 17434 (Apr. 6, 2010). The complaint named as proposed respondents High Tech Computer Corp. of Taiwan ("HTC") and its United States subsidiaries HTC America Inc. of Bellevue, Washington ("HTC America"), and Exedea, Inc. of Houston, Texas ("Exedea"). The complaint alleged the infringement of numerous patents, including certain claims in U.S. Patent No. 5,946,647 ("the '647 patent").

On December 19, 2011, the Commission found a violation of section 337 as to claims 1 and 3 of the '647 patent, and no violation of section 337 as to any other asserted claims. 76 FR 80402 (Dec. 23, 2011). An opinion accompanied the notice. The Commission issued a limited exclusion order, the enforcement of which the Commission determined would not commence until April 19, 2012, in order to provide time for wireless carriers to transition to different products.

On June 4, 2012, Apple filed a complaint requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75 to investigate a violation of the limited exclusion order, and seeking temporary emergency action under Commission Rule 210.77. The complaint names as proposed respondents HTC and HTC America. On June 15, 2012, HTC and HTC America submitted a letter to the Commission opposing Apple's request for temporary emergency action, and seeking to narrow the scope of any enforcement action instituted based in part on Apple's waiver of certain arguments in the underlying investigation. On June 18, 2012, third-party T-Mobile USA, Inc. ("T-Mobile") filed a letter with the Commission arguing that any further Commission action should be accompanied by a new four-month transition period. Apple and HTC filed additional letters with the Commission on June 21 and 22, 2012, respectively.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding as set forth in Commission Rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether HTC and HTC America are in violation of the December 19, 2011, limited exclusion order. The following entities are named as parties to the formal enforcement proceeding: (1) Apple; (2) respondents HTC and HTC America; and (3) the Office of Unfair Import Investigations.

As set forth more fully in the accompanying Order, the Commission

has determined not to take temporary emergency action under Commission Rule 210.77.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.75 and 210.77 of the Commission's Rules of Practice and Procedure (19 CFR 210.75 and 210.77).

Issued: July 2, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–16574 Filed 7–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–827]

Certain Portable Communication Devices; Determination Not To Review Initial Determinations Terminating the Investigation as to All Respondents; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations ("IDs") (Order Nos. 14 and 15) granting joint motions to terminate the above-captioned investigation with respect to all respondents on the basis of settlement agreements. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 19, 2012, based on a complaint filed on behalf of Digitude Innovations LLC of Alexandria, Virginia ("Digitude") on December 2, 2011 and amended on December 16, 2011. 77 FR 2758 (January 19, 2012). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of one or more of claims 7–13 and 15 of U.S. Patent No. 5,926,636; claims 1–9 and 17–25 of U.S. Patent No. 5,929,655; claims 1–8 and 14–20 of U.S. Patent No. 6,208,879; and claims 1–5 of U.S. Patent No. 6,456,841. The notice of investigation named the following respondents: Research In Motion Ltd. of Ontario, Canada, Research In Motion Corp. of Irving, Texas (collectively "RIM"); HTC Corporation of Taoyuan, Taiwan; HTC America, Inc. of Bellevue, Washington (collectively "HTC"); LG Electronics, Inc. of Seoul, South Korea, LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey, LG Electronics MobileComm U.S.A, Inc. of San Diego, California (collectively "LG"); Motorola Mobility, Inc. of Libertyville, Illinois ("Motorola"); Samsung Electronics Co., Ltd of Seoul, South Korea, Samsung Electronics America, Inc. of Ridgefield Park, New Jersey, Samsung Telecommunications America, LLC of Richardson, Texas (collectively "Samsung"); Sony Corporation of Tokyo, Japan, Sony Corporation of America of New York, New York, Sony Electronics, Inc. of San Diego, California, Sony Ericsson Mobile Communications AB of Lund, Sweden, Sony Ericsson Mobile Communications (USA) Inc. of Research Triangle Park, North Carolina (collectively "Sony"); Amazon.com, Inc. of Seattle, Washington ("Amazon"); Nokia Corporation of Espoo, Finland, Nokia Inc. of Irving, Texas (collectively "Nokia"); Pantech Co., Ltd. of Seoul, South Korea, and Pantech Wireless, Inc. of Atlanta, Georgia (collectively "Pantech").

On May 8, 2012, Digitude and respondents RIM, LG, Motorola, Samsung, Sony, Amazon, and Pantech filed a joint motion under Commission Rule 210.21(a)(2) to terminate the investigation on the basis of a settlement agreement that resolves their litigation. On May 11, 2012, Digitude and the remaining respondents HTC and Nokia also filed a joint motion under Commission Rule 210.21(a)(2) to terminate the investigation on the basis of a settlement agreement that resolves their litigation. Public and confidential versions of the agreements were attached to the motions. The motions stated that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation. The Commission investigative attorney supported both motions. On May 31, 2012, the ALJ issued Order No. 14 granting the joint motion filed on May 8, 2012. On the same day, the ALJ issued Order No. 15 granting the joint motion filed on May 11, 2012. No petitions for review were filed.

The Commission has determined not to review the subject IDs. The investigation is terminated.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 29, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–16485 Filed 7–5–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification of Consent Decree Under the Clean Water Act

Notice is hereby given that on June 29, 2012, a proposed Modification of Consent Decree ("Modification") in *United States of America* v. *Puerto Rico Aqueduct and Sewer Authority, and The Commonwealth of Puerto Rico,* Civil Action No. 3:10–1365 (SEC) was lodged with the United States Court for the District of Puerto Rico. The Consent Decree requires the Puerto Rico Aqueduct and Sewer Authority ("PRASA") to, among other things, implement injunctive relief measures at 126 water treatment plants (WTPs) over a 15 year period throughout the Commonwealth of Puerto Rico. The injunctive relief measures are to be implemented in three phases which include short-term and mid-term remedial actions; as well as longer term capital improvement projects. The details of the injunctive relief measures were originally described in Paragraph 8 of the Consent Decree, and Appendices C–E attached to the Consent Decree. To date, PRASA has completed all of the short-term remedial measures required under the Consent Decree. The Consent Decree also required PRASA to comply with interim limits at certain WTPs, and the particular interim limits were set

forth in Appendix F attached to the Consent Decree.

The proposed Modification amends the Consent Decree by expanding the scope and extending the deadline for completion of the mid-term remedial measures as set forth in Paragraph 8. b. and Appendix D of the Consent Decree. The original Consent Decree requires 148 mid-term remedial measures to be completed by June 30, 2012. Pursuant to the proposed Modification 232 mid-term remedial projects are required to be completed under the following schedule: completion of 14 projects by June 30, 2012; completion of 37 projects by October 31, 2012; completion of 102 projects by December 31, 2012; completion of 72 projects by March 31, 2013; and completion of the remaining 7 projects by June 30, 2013. The proposed Modification also calls for increased reporting by PRASA on the status of the mid-term remedial measures, as well as four meetings between EPA and PRASA between October 2012 and May 2013 to discuss the progress of the remedial measures.

In addition, the proposed Modification revises Appendix F that sets forth interim limits that apply for certain WTPs. Supplemental sampling taken after entry of the Consent Decree indicates that revisions to some of the interim limits, as originally listed in Appendix F, is appropriate, and the proposed Modification replaces original Appendix F with a revised Appendix F setting forth the modified interim limits for certain WTPs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matter as *United States* v. *Puerto Rico Aqueduct and Sewer Authority and the Commonwealth of Puerto Rico*, D.J. Ref. 90–5–1–1–08385/2.

The Consent Decree may be examined at the Office of the United States Attorney, Torre Chardon Suite 1201, 350 Carlos Chardon Avenue, San Juan, Puerto Rico 00918, and at U.S. EPA CEPD office, City View Plaza—Suite 7000, #48 Rd. 165 KM. 1.2, Guaynabo, Puerto Rico 00968–8069. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to "Consent Decree Copy" (EESCDCopy.ENRD@usdoj.gov), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $27.75 (25 cents per page reproduction costs of the Consent Decree) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 2012–16495 Filed 7–5–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Gap Association

Notice is hereby given that, on June 6, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Gap Association ("AGA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is American Gap Association, Portland, OR. The nature and scope of AGA's standards development activities are to set industry standards for the safety, supervision, and general integrity of "gap year" educational programs.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–16507 Filed 7–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—FDI Cooperation LLC

Notice is hereby given that, on June 6, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), FDI Cooperation LLC ("FDI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: FDT Group, AISBL, Jodoigne, BELGIUM; Fieldbus Foundation, Austin, TX; HART Communication Foundation, Austin, TX; PROFIBUS Nutzerorganisation e. V., Karlsruhe, GERMANY; OPC Foundation, Scottsdale, AZ; ABB Automation GmbH, Mannheim, GERMANY; Emerson Process Management LLLP, Round Rock, TX; Endress+Hauser Process Solutions AG, Reinach, SWITZERLAND; Honeywell International Inc., Phoenix, AZ; Invensys Systems Inc., Foxboro, MA; Siemens AG, Karlsruhe, GERMANY; Yokogawa Electric Corporation, Tokyo, JAPAN; ifak e. V., Magdeburg, GERMANY; and Smar Equipamentos Industriais Ltda., Sao Paulo, BRAZIL.

The general area of FDI's planned activity is to develop, distribute, and maintain the FDI Specification and FDI Tools and Components and to maintain the IEC EDDL specification (IEC 61804–3 and -4). The parties want the FDI Specifications itself to be independent of any specific communication protocol and to be applied in conjunction with various communication and configuration technologies provided by the foundation participants (FDT Group, AISBL; Fieldbus Foundation; HART Communication Foundation; PROFIBUS Nutzerorganisation e. V.; and OPC Foundation) to their members. (These foundations own the joint venture; the remaining participants are not owners.) To support the adoption and implementation of the FDI Specification, and ensure interoperability and reduce implementation costs, the Company will develop and license or have licensed the

FDI Tools and Components. The FDI Specification shall be marketed, promoted, and licensed to third parties through FDI's member foundations. FDI currently includes four working groups: (i) Specifications: This working group develops the technical specifications. The FDI Specification created by this working group has been submitted to the IEC standardization process. (ii) Tools and Components: This working group focuses on developing the requirements for the tools that will be created. The output of this working group is a set of requirements and a "Request for Proposal" (RFP) that will be issued to interested parties that will bid on the work. This working group will facilitate review of those bids, and after the deliverables are received, will facilitate acceptance testing. (iii) Tools and Architecture: This working group will manage the development of those tools and their incorporation into a complete toolset. (iv) EDDL Maintenance: The EDDL team was established to help IEC SC65A WG7 in maintaining the standards (IEC 61804 "EDDL") on which the FDI Specifications are based. Further information about FDI is available at *http://www.fdi-cooperation.com/*.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–16509 Filed 7–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993–Connected Media Experience, Inc.

Notice is hereby given that, on June 8, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Connected Media Experience, Inc. ("CMX") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Microsoft Corporation, Redmond, WA; Dolby Laboratories, Inc., San Francisco, CA; and DTS, Inc., Calabasas, CA, have been added as members to this venture.

In addition, Push Entertainment Ltd., Bath, UNITED KINGDOM; Robin Berjon, (individual member), Paris, FRANCE; Topspin Media, Inc., San Francisco, CA; Vodafone Group Services Limited, Newbury, Berkshire, UNITED KINGDOM; Neustar, Inc., Sterling, VA; Brightcove, Inc., Cambridge, MA; and Deluxe Digital Studios, Inc., Burbank, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CMX intends to file additional written notifications disclosing all changes in membership.

On March 12, 2010, CMX filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 16, 2010 (75 FR 20003).

The last notification was filed with the Department on March 16, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 13, 2012 (77 FR 22348).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–16510 Filed 7–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on June 8, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Poseidon, Inc., Outremont, Québec, CANADA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on April 17, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 2012 (77 FR 28405).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–16511 Filed 7–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Application, Chattem Chemicals Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on May 16, 2012, Chattem Chemicals Inc., 3801 St. Elmo Avenue, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methamphetamine (1105)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers. The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act [21 U.S.C. 952(a)(2)(B)] may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at

the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 6, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: June 28, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–16501 Filed 7–5–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Cerilliant Corporation

By Notice dated March 23, 2012, and published in the **Federal Register** on April 2, 2012, 77 FR 19717, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-Methyl-N-methylcathinone (1248).	I
3,4-Methylenedioxypyrovalerone (7535).	I
3,4-Methylenedioxy-N-methylcathinone (7540).	I
Desomorphine (9055)	I

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cerilliant Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest.

The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: June 28, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–16502 Filed 7–5–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0027]

1,3-Butadiene Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified by the 1,3-Butadiene Standard (29 CFR 1910.1051).

DATES: Comments must be submitted (postmarked, sent, or received) by September 4, 2012.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0027, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2012–0027) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed

and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

In this regard, the 1,3-Butadiene Standard requires employers to monitor employee exposure to 1,3-Butadiene; develop and maintain compliance and exposure goal programs if employee exposures to 1,3-Butadiene are above the Standard's permissible exposure limits or action level; label respirator filter elements to indicate the date and time it is first installed on the respirator; establish medical surveillance programs to monitor employee health; and to provide employees with information about their exposures and the health effects of exposure to 1,3-Butadiene.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting a 36 hour burden hour adjustment decrease (from 952 to 916 hours). The adjustment is a result of a 25% decline in the number of butadiene monomer facilities from 12 to 9. Also, the Agency is increasing the cost from $95,248 to $105,912, a total cost increase of $10,664. The cost increase is due to a 12.8% increase in the price of professional medical services from 2008 to 2011.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard.

Type of Review: Extension of a currently approved collection.

Title: 1,3-Butadiene Standard (29 CFR 1910.1051).

OMB Control Number: 1218–0170.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 86.

Total Responses: 3,650.

Frequency: On occasion.

Average Time per Response: Time per response ranges from 15 seconds (.004 hour) to write the date and time on each new cartridge label to 2 hours to complete a referral medical examination.

Estimated Total Burden Hours: 916.

Estimated Cost (Operation and Maintenance): $105,912.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0027). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on June 29, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–16512 Filed 7–5–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0024]

Rollins College; T.A. Loving Co.; US Ecology Idaho, Inc.; and West Pharmaceutical Services, Inc.: Technical Amendment to, and Revocation of, Permanent Variances

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

ACTION: Notice of technical amendment to, and revocation of, permanent variances.

SUMMARY: With this notice, the Occupational Safety and Health Administration ("OSHA" or "the Agency") is making a technical amendment to an existing permanent variance, and revoking several others. The technical amendment and revocations result from an OSHA review

to identify variances that are outdated, unnecessary, or otherwise defective.

DATES: The effective date of the technical correction and revocation of the permanent variances is July 6, 2012.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries. Contact Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999. Email: *meilinger.francis2@dol.gov.*

Technical information. Contact Stefan Weisz, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2110; fax: (202) 693–1644. Email: *weisz.stefan@dol.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Background

OSHA reviewed variances currently in effect to identify variances that are outdated, unnecessary, or otherwise defective; as part of this review, OSHA contacted by telephone every employer having a variance to ask them if they still needed the variance. Based on this review, OSHA identified four defective variances. The first of these variances requires a technical correction because OSHA, after granting the variance, renumbered the standard from which it granted the variance. The Agency also determined that the remaining three variances are no longer necessary because the employers that received the variances indicated that the requirement for the variances no longer exists, and that they now can comply with the standard from which OSHA granted the variance. With this notice, the Agency is correcting these problems. OSHA believes this notice will ensure that the first variance is consistent with the standard's existing enumeration and, for the revoked variances, this notice will notify employers and employees that the variances no longer cover the employers, and that the employers must comply with the appropriate OSHA standard.

The technical amendment implemented by this notice does not alter the substantive requirements of the first variance, which still remains in effect, so this corrected variance will continue to provide employees with the safety and health protection afforded to them by the original variance. For the variances revoked by this notice, existing OSHA standards will provide employees with the necessary protection.

With this notice, the Agency is making only a technical correction to an existing variance, and revoking variances that employers no longer need for employee protection. Accordingly, this notice will not have a substantive effect on employers or employees; OSHA, therefore, finds that public notice-and-comment procedures specified under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and by 29 CFR 1905.11 or 1905.13, are unnecessary.

The following table provides details about the variances addressed by this notice:

Name of employer (company) affected	Variance No.	Date granted	Federal Register cite	OSHA standards
Rollins College	V–74–16	03/28/1974	39 FR 11481	1910.37(i).
T.A. Loving Co	V–74–43	04/13/1976	41 FR 15483	1918.66(f)(1)(i).
US Ecology Idaho, Inc. (formerly Envirosafe Services, Inc.) ..	V–93–1	06/07/1994	59 FR 29440	1910.106(b)(2)(viii)(f).
West Pharmaceutical Services, Inc. (formerly The West Co.)	V–77–9	01/20/1978	43 FR 2945	1910.217(c)(3)(i)(e) and 1910.217(c)(3)(ii).

II. Technical Amendment to, and Revocation of, Permanent Variances

A. Technical Amendment of the Permanent Variance Granted to Rollins College

OSHA granted Rollins College a variance from 29 CFR 1910.37(i), which governed ceiling height for means of egress (see table above for details). The Agency renumbered this provision (to 29 CFR 1910.36(g)(1)) in a subsequent rulemaking that revised its means-of-egress standards to improve the clarity and comprehensibility of these standards (see 67 FR 67962, November 7, 2002). While this rulemaking renumbered 29 CFR 1910.37(i) as 29 CFR 1910.36(g)(1), it did not revise the substantive requirements of the provision.

B. Revoking Permanent Variances

1. *T. A. Loving Co.* The Agency granted T. A. Loving Co. a variance permitting it to use dynamometers instead of load-indicating devices on mobile cranes (see the table above for details). In response to OSHA's telephone call, T. A. Loving's representative indicated that the variance is no longer needed. T. A. Loving requested in a subsequent letter that OSHA revoke the variance (Ex. 1—OSHA–2012–0024).

2. *US Ecology Idaho, Inc.* The Agency granted Envirosafe Services, Inc. (now US Ecology Idaho, Inc.), a variance to make and break filling and emptying connections inside, instead of outside, a building during the transfer of flammable/combustible liquids as required by the OSHA standard (see the table above for details). In response to OSHA's telephone call, US Ecology Idaho's representative indicated that the variance is no longer necessary. Later, US Ecology Idaho requested in a letter that OSHA revoke the variance (Ex. 2—OSHA–2012–0024).

3. *West Pharmaceutical Services, Inc.* The Agency granted The West Co. (now West Pharmaceutical Services, Inc.) a variance to use power presses with safety blocks and a sliding barrier that did not conform to OSHA's distance and guarding requirements (see the table above for details). In response to OSHA's telephone call, West Pharmaceutical Services' representative indicated that the company no longer needed the variance. West Pharmaceutical Services then requested in a letter that OSHA revoke the variance (Ex. 3—OSHA–2012–0024).

III. Decision

Based on the information described herein, including the finding that this notice will not alter the substantive requirements of the variance and will maintain the protection afforded to employees by the variances, the Agency is taking the following actions:

A. Correcting the Rollins College variance by updating the designation of

the provision from which OSHA granted the variance from 29 CFR 1910.37(i) to 29 CFR 1910.36(g)(1).

B. Revoking the variances granted to T. A. Loving Co., US Ecology Idaho, Inc., and West Pharmaceutical Services. The variances granted to T. A. Loving Co. and West Pharmaceutical Services included facilities in North Carolina, a state with an OSHA-approved State Plan under Section 18 of the Occupational Safety and Health Act (29 U.S.C. 667). OSHA will notify North Carolina of the revocation of these variances.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–2012 (76 FR 3912), and 29 CFR part 1905.

Signed at Washington, DC, on June 29, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–16513 Filed 7–5–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Proposed Collection of Information; Comment Request: Biological Sciences Proposal Classification Form

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by September 4, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: "Biological Sciences Proposal Classification Form."

OMB Approval Number: 3145–0203.

Expiration Date of Approval: September 30, 2012.

Type of Request: Intent to seek approval to renew an information collection for three years.

Proposed Project: Five organizational units within the Directorate of Biological Sciences of the National Science Foundation will use the Biological Sciences Proposal Classification Form. They are the Division of Biological Infrastructure (DBI), the Division of Environmental Biology (DEB), the Division of Molecular and Cellular Biosciences (MCB), the Division of Integrative Organismal Systems (IOS) and Emerging Frontiers (EF). All scientists submitting proposals to these units will be asked to complete an electronic version of the Proposal Classification Form. The form consists of brief questions about the substance of the research and the investigator's previous federal support. Each division will have a slightly different version of the form. In this way, submitters will only confront response choices that are relevant to their discipline.

Use of the Information: The information gathered with the Biological Sciences Proposal Classification Form serves two main purposes. The first is facilitation of the proposal review process. Since peer review is a key component of NSF's grant-making process, it is imperative that proposals are reviewed by scientists with appropriate expertise. The information collected with the Proposal Classification Form helps ensure that the proposals are evaluated by specialists who are well versed in appropriate subject matter. This helps maintain a fair and equitable review process.

The second use of the information is program evaluation. The Directorate is committed to investing in a range of substantive areas. With data from this collection, the Directorate can calculate submission rates and funding rates in specific areas of research. Similarly, the information can be used to identify emerging areas of research, evaluate changing infrastructure needs in the research community, and track the amount of international research. As the National Science Foundation is committed to funding cutting-edge science, these factors all have implications for program management.

The Directorate of Biological Sciences has a continuing commitment to monitor its information collection in order to preserve its applicability and necessity. Through periodic updates and revisions, the Directorate ensures that only useful, non-redundant information is collected. These efforts will reduce excessive reporting burdens.

Burden on the Public: The Directorate estimates that an average of five minutes is expended for each proposal submitted. An estimated 6,500 responses are expected during the course of one year for a total of 542 public burden hours annually.

Expected Respondents: Individuals.

Estimated Number of Responses: 6,500.

Estimated Number of Respondents: 6,500.

Estimated Total Annual Burden on Respondents: 542 hours.

Frequency of Responses: On occasion.

Dated: July 2, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–16537 Filed 7–5–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

Correction

The National Science Board, pursuant to NSF regulations (45 CFR part 614),

the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference. This document corrects the NSF Sunshine Act Notice that published in the **Federal Register** July 2, 2012 (77 FR 39270). The teleconference for the transaction of National Science Board business and other matters specified will occur as follows:

CORRECTED DATE & TIME: Friday, July 6, 2012, 12:30 p.m.–1:00 p.m. EDT.

SUBJECT MATTER: Discussion of future planning for data policies.

STATUS: Closed.

This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230.

UPDATES & POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for information and schedule updates, or contact: Ann Ferrante, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2012–16567 Filed 7–3–12; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; NRC–2008–0672]

Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplement to Supplement 38 to the generic environmental impact statement for license renewal of nuclear plants; availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment a draft supplement to Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–26 and DPR–64 for an additional 20 years of operation for Indian Point Nuclear Generating Units 2 and 3 (IP2 and IP3). IP2 and IP3 are located in Westchester County in the Village of Buchanan, New York, approximately 24 miles north of New York City.

DATES: Submit comments by August 20, 2012. 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 access information and comment submissions related to this document, which the NRC possesses and is publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2008–0672. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0672. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *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. Michael Wentzel, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6459 or by email at: *Michael.Wentzel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2008–0672 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0672.
- *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 supplement to Supplement 38 is available under ADAMS Accession No. ML12174A244.
- *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 Web page:* Documents related to this notice are available on the NRC's Plant Application for License Renewal Web site at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/indian-point.html.* The draft supplement to Supplement 38 for the IP2 and IP3 license renewal application may also be accessed on the internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/* by selecting "Supplement 38."
- *Local Library:* A copy of the draft supplement to Supplement 38 to the GEIS will be available to local residents near the site at the White Plains Public Library located at 100 Martine Avenue, White Plains, NY 10601, at the Hendrick Hudson Free Library located at 185 Kings Ferry Road, Montrose, NY 10548, and at the Field Library located at 4 Neslon Avenue, Peekskill, NY 10566.

B. Submitting Comments

Please include Docket ID NRC–2008–0672 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 in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not 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 in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not 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

The NRC received an application, by letter dated April 23, 2007, from Entergy Nuclear Operations, Inc. (Entergy), to renew the operating licenses for IP2 and IP3 for an additional 20 years. In support of the application and in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 51 and 54. Entergy also submitted an environmental report for IP2 and IP3. In December 2010, the NRC staff issued its final plant-specific Supplement 38 to NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS)" (final SEIS), regarding the renewal of operating licenses DPR–26 and DPR–64 for an additional 20 years of operation for IP2 and IP3.

Pursuant to 10 CFR 51.92(a)(2), if a proposed action has not been taken, the NRC is to prepare a supplement to a final environmental impact statement (EIS) for which a notice of availability has been published in the **Federal Register** as provided in § 51.118, if there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. In addition, pursuant to 10 CFR 51.92(c), the NRC staff may prepare a supplement to a final EIS when, in the opinion, preparation of a supplement will further the purpose of the National Environmental Policy Act of 1969 (NEPA).

Subsequent to the issuance of the final SEIS, the NRC staff identified certain new information regarding aquatic impacts that necessitated changes to the staff's findings in the final SEIS. Therefore, the NRC staff has prepared a draft supplement to Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants.

Dated at Rockville, Maryland, this 26th day of June 2012.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–16548 Filed 7–5–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389; NRC–2011–0302]

License Amendment To Increase the Maximum Reactor Power Level, Florida Power & Light Company, St. Lucie, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment for Renewed Facility Operating License Nos. DPR–67 and NPF–16, issued to Florida Power & Light Company (FPL or the licensee) for operation of the St. Lucie Plant, Units 1 and 2 (St. Lucie), located in St. Lucie County, Florida. The proposed license amendment would increase the maximum thermal power level from 2,700 megawatts thermal (MWt) to 3,020 MWt for each unit. The proposed power increase is 11.85 percent over the current licensed thermal power. The NRC performed an environmental assessment (EA) and based on its results, the NRC is issuing a finding of no significant impact (FONSI).

ADDRESSES: Please refer to Docket ID NRC–2011–0302 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–2011–0302. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *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.
- *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.

I. Introduction

The NRC is considering issuance of an amendment for Renewed Facility Operating License Nos. DPR–67 and NPF–16, issued to Florida Power & Light Company (FPL or the licensee) for operation of St. Lucie, located in St. Lucie County, Florida, in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 50.90. The NRC performed an EA and based on its results, the NRC is issuing a FONSI.

The proposed license amendment would increase the maximum thermal power level from 2,700 megawatts thermal (MWt) to 3,020 MWt for each unit. The proposed power increase is 11.85 percent over the current licensed thermal power. In 1981, FPL received approval from the NRC to increase its power by 5.47 percent to the current power level of 2,700 MWt.

The NRC did not identify any significant environmental impacts associated with the proposed action based on its evaluation of the information provided in the licensee's application and other available information. For further information with respect to the proposed action, see the licensee's applications dated November 22, 2010, and February 25, 2011 (ADAMS Accession Nos. ML103560419 and ML110730116, respectively), as supplemented by letter dated May 2, 2012 (ADAMS Accession No. ML12124A224).

The NRC published a notice in the **Federal Register** requesting public review and comment on a draft EA and FONSI for the proposed action on January 6, 2012 (77 FR 813), and established February 6, 2012, as the deadline for submitting public comments. By letters dated January 30, 2012, and January 6, 2012 (ADAMS Accession Nos. ML12037A063 and ML12044A127, respectively), the NRC received comments from FPL and Mr. Edward W. Johnson, respectively. The FPL comments provided new estimates on the number of additional workers needed to support the outage work implementing the proposed Extended Power Uprate (EPU) and revised the projected outage times necessary to implement the EPU. The FPL comments have been incorporated in this final EA with no change to the FONSI conclusion. The comments from Mr. Johnson have been addressed in this final EA with no change to the FONSI conclusion. The comments are summarized in the attachment to this document, "Summary of Comments on

the Draft Environmental Assessment and Draft Finding of No Significant Impact."

II. Environmental Assessment

Plant Site and Environs

The St. Lucie site is located on approximately 1,130 acres (457 hectares) in Sections 16 and 17, Township 36 South, Range 41 East on Hutchinson Island in unincorporated St. Lucie County, Florida. St. Lucie is bordered by the Atlantic Ocean to the east and the Indian River Lagoon, a tidally influenced estuary, to the west. The plant is located on Hutchinson Island between Big Mud Creek to the north and Indian River to the south on an area previously degraded through flooding, drainage, and channelization for mosquito control projects. The nearest city limits from the plant site on the Atlantic coast are Port St. Lucie, approximately 2.5 miles (mi) (4 kilometers (km)) southwest, and Fort Pierce, approximately 4 mi (6.4 km) northwest of the plant. St. Lucie has two pressurized water reactors (Units 1 and 2), each designed by Combustion Engineering for a net electrical power output of 839 megawatts electric. St. Lucie Unit 1 is fully owned by FPL, which has operated it since March 1, 1976. The licensee also solely operates St. Lucie Unit 2, which began operations on April 6, 1983, and is co-owned by FPL, Orlando Utilities Commission, and Florida Municipal Power Agency.

St. Lucie withdraws cooling water from the Atlantic Ocean through three offshore cooling water intakes with velocity caps. The ocean water is drawn through buried pipes into the plant's L-shaped intake canal to the eight intake pumps that circulate the non-contact cooling water through the plant. Two mesh barrier nets, one net of 5-inch (in) (12.7 centimeter (cm)) mesh size and the other of 8-in (20.3 cm) mesh size, and one rigid barrier located sequentially in the intake canal reduce the potential loss of large marine organisms, mostly sea turtles. Water passes through a trash rack made of 3-in (7.6 cm) spaced vertical bars and a ⅜-in (1 cm) mesh size traveling screen, against which marine organisms that have passed through the nets are impinged, and into eight separate intake wells (four per unit) where it is pumped to a circulating-water system and an auxiliary cooling water system at each unit. The majority of the water goes to a once-through circulating-water system to cool the main plant condensers. The system has a nominal total capacity of 968,000 gallons per minute (gpm) (61,070 liters per second (L/s)). The auxiliary cooling water systems are also once-through cooling systems but use much less water (up to 58,000 gpm (3,660 L/s)) than the circulating-water systems. Marine life that passes through the screens becomes entrained in the water that passes through the plant and is subject to thermal and mechanical stresses. The plant is also equipped with an emergency cooling water intake canal on the west side that can withdraw Indian River Lagoon water through Big Mud Creek, but this pathway is closed during normal plant operation.

The heated water from the cooling water systems flows to a discharge canal and then through two offshore discharge pipes beneath the beach and dune system back to the Atlantic Ocean. One 12-foot (ft) (3.6 meter (m))-diameter discharge pipe extends approximately 1,500 ft (457 m) offshore and terminates in a two-port "Y" diffuser. A second 16-ft (4.9 m)-diameter discharge pipe extends about 3,400 ft (1,040 m) from the shoreline and terminates with a multiport diffuser. This second pipe has fifty-eight 16-in (41 cm)-diameter ports spaced 24 ft (7.3 m) apart along the last 1,400 ft (430 m) of pipe farthest offshore. The discharge of heated water through the diffusers on the discharge pipes ensures distribution over a wide area and rapid and efficient mixing with ocean water.

Background Information on the Proposed Action

By application dated November 22, 2010 (Unit 1), and February 25, 2011 (Unit 2), the FPL requested an amendment for an EPU for St. Lucie to increase the licensed thermal power level from 2,700 MWt to 3,020 MWt for each unit, which represents an increase of 11.85 percent above the current licensed thermal power. This change requires NRC approval prior to the licensee operating at that higher power level. The proposed action is considered an EPU by the NRC because it exceeds the typical 7-percent power increase that can be accommodated with only minor plant changes. An EPU typically involves extensive modifications to the nuclear steam supply system contained within the plant buildings.

The licensee plans to make the extensive physical modifications to the plant's secondary side (i.e., non-nuclear) steam supply system that are needed in order to implement the proposed EPU. The modifications were scheduled to be implemented for Unit 1 and Unit 2 over the course of four refueling outages. Three of the four outages have been completed, with Unit 2 modifications scheduled to be implemented during the fall 2012 outage, which will be longer than a routine 35-day outage at approximately 113 days. Unit 1 also requires a short "mid-cycle" outage of 10-days in the summer of 2012 to implement final EPU modifications. The actual power uprate, if approved by the NRC, constitutes a 10 percent power uprate from major equipment installations and upgrades and operating changes and an additional 1.7 percent power uprate from upgrades that decrease certain measurement uncertainties. As part of the proposed EPU project, FPL would release heated water with a proposed temperature increase of 3 °F (1.7 °C) above the current discharge temperature through the discharge structures into the Atlantic Ocean.

Approximately 800 people are currently employed at St. Lucie on a full-time basis. For the recently completed Unit 1 outage, this workforce was augmented by an additional 750 EPU workers on average, with a peak of 1,703 workers. For the mid-cycle Unit 1 outage, FPL estimates no additional staff. For the upcoming Unit 2 outage, FPL estimates an average of 1,058 workers, with a peak of 1,439 workers. The increase of workers would be larger than the number of workers required for a routine outage; however, the peak construction workforce would be smaller than the FPL-reported peak workforce for previous outages involving replacement of major components.

The Need for the Proposed Action

The licensee states in its environmental report that the proposed action is intended to provide an additional supply of electric generation in the State of Florida without the need to site and construct new facilities, or to impose new sources of air or water discharges to the environment. The licensee has determined that increasing the electrical output of St. Lucie Units 1 and 2 is the most cost effective option to meet the demand for electrical energy while enhancing fuel diversity and minimizing environmental impacts, including the avoidance of greenhouse gas emissions.

As stated in FPL's application, the proposed action is to provide the licensee with the flexibility to increase the potential electrical output of St. Lucie. The proposed EPU will increase the output for each unit by about 320 MWt, from about 2,700 MWt to about 3,020 MWt.

Environmental Impacts of the Proposed Action

As part of the original licensing process for St. Lucie, the U.S. Atomic Energy Commission published a Final Environmental Statement (FES) in 1973 for Unit 1, and the NRC published a FES in 1982 for Unit 2 (NUREG–0842). The two FESs contain an evaluation of the potential environmental impacts associated with the operation of St. Lucie over their licensed lifetimes. In May 2003, the NRC published an environmental impact statement (EIS) for St. Lucie (ADAMS Accession No. ML031360705). The 2003 EIS evaluated the environmental impacts of operating St. Lucie for an additional 20 years beyond its then-current operating license, extending the operation life of Unit 1 until 2036 and Unit 2 until 2043. The NRC determined that the overall environmental impacts of license renewal were small. This NRC evaluation is presented in NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 11, Regarding St. Lucie Units 1 and 2" (Supplemental Environmental Impact Statement (SEIS)—11). The NRC used information from FPL's license amendment request for the EPU, FPL's response to requests for additional information (ADAMS Accession No. ML12132A067), consultation with National Marine Fisheries Service, the FESs, and SEIS–11 to perform the EA for the proposed EPU.

The licensee's application states that it would implement the proposed EPU without extensive changes to buildings or to other plant areas outside of buildings. The licensee proposes to perform all necessary physical plant modifications in existing buildings at St. Lucie or along the existing electrical transmission line right of way (ROW). With the exception of the high-pressure turbine rotor replacement, the required plant modifications would be generally small in scope. Other plant modifications would include installing a new digital turbine control system and associated control room; providing additional cooling for some plant systems; modifying feedwater and condensate systems; accommodating greater steam and condensate flow rates; adjusting the current onsite power system to compensate for increases in electrical loading; and upgrading instrumentation to include minor items such as replacing parts, changing setpoints, and modifying software.

The licensee would use a vehicle and helicopter for transmission line modifications proposed along the existing overhead electrical transmission line ROW. The vehicle would transport personnel and a spool of overhead wire as a helicopter holds and moves the wire into place for the stringing activities. Although the modifications are part of the proposed EPU, this type and extent of activity along the ROW is included in existing maintenance permits and licenses.

The following sections describe the potential nonradiological and radiological impacts to the environment that could result from the proposed EPU.

Nonradiological Impacts

Land Use and Aesthetic Impacts

Potential land use and aesthetic impacts from the proposed EPU include impacts from proposed plant modifications at St. Lucie. While FPL proposes some plant modifications, most plant changes related to the proposed EPU would occur within existing structures, with the exception of modifications along the electrical transmission line ROW. As described in the licensee's application, the proposed electrical transmission line modifications would include the addition of subconductor spacers, an overhead wire, and replacement of relay protection electronics. The overhead wire would function as a ground for relay protection of the transmission lines. The licensee would install these transmission line modifications via helicopter. The only land use activity FPL expects to occur on the ground along the ROW would be the periodic need to park a truck or trailer containing a spool of wire that would be strung but would not extend outside of the existing ROW area. The NRC expects the electrical transmission line modifications to cause little or no observable change in the appearance of the transmission lines. Maintenance of the electrical transmission line ROW (tree trimming, mowing, and herbicide application) would continue after EPU implementation. The NRC does not expect land use or aesthetic changes for the proposed EPU along the transmission line ROW.

During the EPU related refueling outages, FPL added two additional overflow parking areas (Area 1 and Area 2), safe walk pathways, additional lighting, and signage. The parking lot located in Area 1 was a previously vacant area that was prepared by grading. The parking lot located in Area 2 required some minor grubbing and grading. Both parking lots are located on previously disturbed areas, and FPL performed surveys of the areas prior to any ground-disturbing activities to evaluate potential impacts to threatened or endangered species and any ecological and cultural resources. Permits were not required or obtained for this work and best management practices were employed to reduce fugitive emissions. Other than the ground-disturbing activities described above, no new construction would occur outside of existing plant areas, and no expansion of buildings, roads, parking lots, equipment lay-down areas, or storage areas are required to support the proposed EPU. Existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms would be used during plant modifications. Because land use conditions would not change, and because any land disturbance has and would occur within previously disturbed areas, there would be no significant impact from EPU-related plant modifications on land use and aesthetic resources in the vicinity of St. Lucie.

Air Quality Impacts

Because of its coastal location, meteorological conditions conducive to high air pollution are infrequent at St. Lucie. The plant is located within the South Florida Intrastate Air Quality Control Region. In addition, the Central Florida Intrastate Air Quality Control Region and the Southwest Florida Intrastate Air Quality Control Region are within 50 mi (80.5 km) of St. Lucie. These regions are designated as being in attainment or unclassifiable for all criteria pollutants in the U.S. Environmental Protection Agency's (EPA) regulations at 40 CFR 81.310.

Diesel generators, boilers, and other activities and facilities associated with St. Lucie emit pollutants. The Florida Department of Environmental Protection (FDEP) regulates emissions from these sources under Air Permit 1110071–006–AF. The FDEP reported no violations at St. Lucie in the last 5 years. The NRC expects no changes to the emissions from these sources as a result of the EPU.

During EPU implementation, some minor and short duration air quality impacts would occur from other non-regulated sources. Vehicles of the additional outage workers needed for EPU implementation would generate the majority of air emissions during the proposed EPU-related modifications. Based on a traffic study FPL conducted for the EPU project, an additional 917 construction vehicles are estimated during an EPU-related outage period, with a peak increase of 1,333. The licensee has completed three of four

planned outages, with the fourth outage planned for the fall of 2012. The outage duration is expected to be longer than a routine 35-day outage, at 113 days. Based on the traffic study conducted by FPL, air emissions from the EPU workforce, truck deliveries, and construction/modification activities would not exceed the FDEP annual emissions limit of 5 tons per year, recognized in Rule 62–210.300(3)(b) of the Florida Administrative Code, and would therefore not be significant. In addition, FPL would perform the majority of the EPU work inside existing buildings, which would not result in changes to outside air quality. The NRC expects no significant impacts to regional air quality from the proposed EPU beyond those air impacts evaluated for SEIS–11, including potential minor and temporary impacts from worker activity.

Water Use Impacts

Groundwater

The licensee has approval from the City of Fort Pierce and the Fort Pierce Utilities Authority to use freshwater for potable and sanitary purposes. Although this freshwater comes from groundwater sources pumped from the mainland, St. Lucie does not use groundwater in any of its cooling systems and has no plans for groundwater use as part of plant operations in the future. The plant currently uses approximately 309,565 gallons (gal) (1,171,831 liters (L)) of freshwater per day (or approximately 154,800 gal (585,982 L) per unit per day) and uses seawater from the Atlantic Ocean for noncontact cooling water. No production wells are present on the plant site for either domestic-type water uses or industrial use. The licensee does not discharge to groundwater at the plant site or on the mainland, and the plant's individual wastewater facility permit (IWFP) does not apply to groundwater.

Under the EPU, FPL does not expect to significantly change the amount of freshwater use or supply source. With an expected increase of 1,000 to 1,700 workers supporting EPU construction activities, the NRC expects potable water use to increase during the outage and return back to the regular operating levels after EPU implementation. It is unlikely this potential temporary increase in groundwater use during the EPU construction activities would have any effect on other local and regional groundwater users. The licensee has no use restrictions on the amount of water supplied by the City of Fort Pierce and the Fort Pierce Utilities Authority. The NRC expects no significant impact on groundwater resources during proposed EPU construction activities or following EPU implementation.

Surface Water

The NRC evaluated the potential effects of releasing heated water with a proposed temperature increase of 3 °F (1.7 °C) above the current discharge temperature through the discharge pipes into the Atlantic Ocean as part of the proposed EPU. The FDEP regulates the Florida Surface Water Quality Standards through an IWFP, which also establishes the maximum area subject to temperature increase (mixing zone), maximum discharge temperatures, and chemical monitoring requirements.

The plant injects chlorine in the form of sodium hypochlorate into seawater upstream of the intake cooling water system in regulated quantities to control microorganisms. Because FDEP regulates discharges and requires chemical monitoring, the NRC expects that the authorized discharges will not exceed the IWFP limitations after EPU implementation.

The FDEP has issued the plant a permit modification to the IWFP for a 2 °F (1.1 °C) temperature increase of the heated water discharge temperature limit—from 113 °F (45 °C) before the EPU to the proposed thermal discharge limit of 115 °F (46.1 °C)—to accommodate the 3 °F (1.7 °C) actual discharge temperature increase. The FDEP granted this permit modification with the condition that FPL performs biological and thermal monitoring studies to demonstrate continued compliance with the Florida Surface Water Quality Standards, Thermal Surface Water Criteria. The proposed EPU will not result in an increase in the amount or rate of water withdrawn from or discharged to the Atlantic Ocean. The licensee conducted a thermal discharge study for the proposed EPU-related increase in discharge water temperature (ADAMS Accession No. ML100830443) that predicts an increase in the extent of the thermal plume (mixing zone). The ambient water affected by the absolute temperature increase beyond the existing mixing zone would be less than 25 ft (7.6 m) vertically or horizontally for the two-port "Y" diffuser and less than 6 ft (1.8 m) in any direction for the multiport diffuser.

The FDEP has the authority to review all Federal licenses for coastal zone consistency with the FCMP. In 2007, FPL included a request for FDEP to review St. Lucie's coastal zone consistency as part of their Site Certification Application for the EPU (ADAMS Accession No. ML12144A316). The FDEP subsequently issued St. Lucie's Site Certification, demonstrating the proposed EPU's consistency with Section 307 of the Coastal Zone Management Act (ADAMS Accession No. ML12144A316).

Because the NRC expects chemical and thermal discharges to remain within the limits specified in St. Lucie's modified permits, and because the FDCA determined that the proposed EPU is consistent with Section 307 of the Coastal Zone Management Act, there would he no significant impact to surface water resources following implementation of the proposed EPU.

Aquatic Resource Impacts

The potential impacts to aquatic resources from the proposed action could include impingement of aquatic life on barrier nets, trash racks, and traveling screens; entrainment of aquatic life through the cooling water intake structures and into the cooling water systems; and effects from the discharge of chemicals and heated water.

Because the proposed EPU will not result in an increase in the amount or velocity of water being withdrawn from or discharged to the Atlantic Ocean, the NRC expects no increase in aquatic impacts from impingement and entrainment beyond the current impact levels. Currently, all organisms impinged on the trash racks and traveling screens would be killed, as would most, if not all, entrained organisms. The licensee would continue to rescue and release sea turtles and other endangered species trapped by the barrier nets in the intake canal. In addition, FPL's IWFP permit requires FPL to monitor aquatic organism entrapment in the intake canal, and, if unusually large numbers of organisms are entrapped, to submit to the FDEP a plan to mitigate such entrapment.

The predicted 3 °F (1.7 °C) temperature increase from the diffusers and resulting increased size of the mixing zone would increase thermal exposure to aquatic biota at St. Lucie in the vicinity of the discharge locations. The thermal discharge study conducted for the proposed EPU predicts no increase in temperature higher than 96 °F (35.5 °C) within 6 ft (1.8 m) of the bottom of the ocean floor and within 24 ft (7.3 m) from the ocean surface as a result of heated water discharged from the multiport diffuser. The same study also predicts that heated water discharged from the "Y" diffuser would not increase the ocean water temperature higher than 96 ° F (35.5 °C) within 2 ft (0.6 m) of the bottom of the ocean floor and within 25 ft (17 m) from the ocean surface. Based on this analysis, surface water temperature

would remain below 94 °F (34.4 °C). Thermal studies conducted for St. Lucie prior to its operation and summarized in SEIS–11 predicted there would be minimal impacts to aquatic biota from diffuser discharges that result in a surface temperature less than 97 °F (36.1 °C). Because the NRC expects the surface water temperature not to exceed 94 °F (34.4 °C) as a result of the proposed EPU, the NRC concludes that there are no significant impacts to aquatic biota from the proposed EPU.

Although the proposed increase in temperature after EPU implementation would continue to exceed the Thermal Surface Water Quality Criteria for open waters as contained in the Florida Surface Water Quality Standards established by FDEP, St. Lucie currently operates under a separate mixing zone variance authorized by the FDEP. The NRC expects FPL to continue to meet its limits under the mixing zone variance after EPU implementation. The licensee will also continue to assess any potential impacts by performing the biological and thermal studies required by the IWFP modification mentioned above. If the study results are insufficient to adequately evaluate environmental changes, or if the data indicates a significant degradation to aquatic resources by exceeding Florida Surface Water Quality Standards or is inconsistent with the FCMP, FDEP could enforce additional abatement or mitigation measures to reduce the environmental impacts to acceptable levels. If the NRC approves the proposed EPU, the NRC does not expect aquatic resource impacts significantly greater than current operations because State agencies will continue to assess study results and the effectiveness of current FPL environmental controls. The FDEP could impose additional limits and controls on FPL if the impacts are larger than expected. Therefore, the NRC has determined that if FDCA and FDEP review the study results and allow FPL to operate at the proposed EPU power level, the increase in thermal discharge will not result in significant impacts on aquatic resources beyond the current impacts that occur during plant operations.

Essential Fish Habitat Consultation

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) identifies the importance of habitat protection to healthy fisheries. Essential Fish Habitat (EFH) is defined as those waters and substrata necessary for spawning, breeding, feeding, or growth to maturity (Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*). Designating EFH is an essential component in the development of Fishery Management Plans to minimize habitat loss or degradation of fishery stocks and to take actions to mitigate such damage. Section 305(b) of the MSA provides that Federal agencies shall consult with the Secretary of Commerce on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect any EFH. On March 20, 2012, an EFH assessment for the proposed EPU was sent to the National Marine Fisheries Service (NMFS) under separate cover to initiate an EFH consultation (ADAMS Accession No. ML12053A345). The submitted EFH assessment found no adverse effects to EFH for two of the species of concern (*Polyprion americanus* and *Litopenaeus setiferus*) and minimal adverse effects for the remaining 40 species. The NMFS responded to the NRC's EFH assessment on May 18, 2012 (ADAMS Accession No. ML12144A008). In its letter, NMFS concluded that the proposed EPU would not have a substantial adverse impact on EFH. This letter fulfilled the NRC's EFH consultation requirements for the proposed EPU under the MSA. Based on its assessment and NMFS's conclusions, the NRC concludes that the proposed EPU would not have substantial adverse impact on EFH.

The following table identifies the species that the NRC considered in its EFH assessment. The NMFS noted in its response that four additional species—Spanish mackerel (*Scomberomorus maculatus*), cobia (*Rachycentron canadum*), king mackerel (*Scomberomorus cavalla*), and spiny lobster (*Panulirus argus*)—should have been included in the NRC's EFH assessment. However, NMFS also noted that this omission does not change the overall evaluation.

SPECIES OF FISH ANALYZED IN THE EFH ASSESSMENT

Fishery management plan	Scientific name	Common name
Coral		
	Order Alcyonacea	octocorals.
	Order Scleractinia	stony coral.
Highly Migratory Coastal Pelagics		
Tuna	*Katsuwonus pelamis*	Atlantic skipjack tuna.
Swordfish	*Xiphias gladius*	swordfish.
Billfish	*Tetrapturus pfluegeri*	longbill spearfish.
	Istiophorus platypterus	sailfish.
Large Coastal Sharks	*Carcharhinus limbatus*	blacktip shark.
	Carcharhinus leucas	bull shark.
	Carcharhinus perezi	Caribbean reef shark.
	Carcharhinus obscures	dusky shark.
	Sphyrna mokarran	great hammerhead shark.
	Negaprion brevirostris	lemon shark.
	Ginglymostoma cirratum	nurse shark.
	Carcharhinus plumbeus	sandbar shark.
	Sphyrna lewini	scalloped hammerhead shark.
	Carcharhinus falciformis	silky shark.
	Carcharhinus brevipinna	spinner shark.
	Galeocerdo cuvier	tiger shark.
	Carchardon carcharias	white shark.
Small Coastal Sharks	*Rhizoprionodon terraenovae*	Atlantic sharpnose shark.
	Carcharhinus acronotus	blacknose shark.
	Sphyrna tiburo	bonnethead shark.

SPECIES OF FISH ANALYZED IN THE EFH ASSESSMENT—Continued

Fishery management plan	Scientific name	Common name
	Carcharhinus isodon	finetooth shark.
Shrimp		
	Farfantepenaeus aztecus	brown shrimp.
	Farfantepenaeus duorarum	pink shrimp.
	Sicyonia brevirostris	rock shrimp.
	Litopenaeus setiferus	white shrimp.
Snapper-Grouper		
	Lutjanus buccanella	blackfin snapper.
	Caulolatilus microps	blueline tilefish.
	Epinephelus itajara	goliath grouper.
	Lutjanus griseus	gray (mangrove) snapper.
	Seriola dumerili	greater amberjack.
	Lutjanus analis	mutton snapper.
	Pagrus pagrus	red porgy.
	Lutjanus campechanus	red snapper.
	Mycteroperca phenax	scamp.
	Lutjanus vivanus	silk snapper.
	Epinephelus niveatus	snowy grouper.
	Epinephelus drummondhayi	speckled hind.
	Rhomboplites aurorubens	vermilion snapper.
	Epinephelus nigritus	Warsaw grouper.
	Haemulon plumier	white grunt.
	Polyprion americanus	wreckfish.
	Epinephelus flavolimbatus	yellowedge grouper.

Terrestrial Resources Impacts

St. Lucie is situated on a relatively flat, sheltered area of Hutchinson Island with red mangrove swamps on the western side of the island that gradually slope downward to a mangrove fringe bordering the intertidal shoreline of the Indian River Lagoon. East of the facility, land rises from the ocean shore to form dunes and ridges approximately 15 ft (4.5 m) above mean low water. Tropical hammock areas are present north of the discharge canal, and additional red mangrove swamps are present north of Big Mud Creek. Habitat in the electrical transmission line ROW is a mixture of human-altered areas, sand pine scrub, prairie/pine flatwoods, wet prairie, and isolated marshes.

Impacts that could potentially affect terrestrial resources include disturbance or loss of habitat, construction and EPU-related noise and lighting, and sediment transport or erosion. The licensee plans to conduct electrical transmission line modifications that would require a periodic need to park a truck or trailer containing a spool of wire. The NRC found in SEIS–11 that no bird mortalities were reported up to that time associated with the electrical transmission lines and predicted that FPL maintenance practices along the ROW would likely have little or no detrimental impact on the species potentially present in or near the electrical transmission ROW. Because FPL proposes a similar type and extent of land disturbance during typical maintenance of the electrical transmission line ROW for the EPU modifications, the NRC expects the proposed transmission line modifications would not result in any significant changes to land use or increase habitat loss or disturbance, sediment transport, or erosion beyond typical maintenance impacts. Noise and lighting would not adversely affect terrestrial species beyond effects experienced during previous outages because EPU-related construction modification activities would take place during outage periods, which are typically periods of heightened activity. Also, as previously discussed, prior to the grading or grubbing conducted for the two additional EPU-related parking areas, FPL performed a survey of the areas in accordance with FPL's conditions of site certification under the FDEP and followed best management practices to ensure that any ecological and terrestrial resources were protected. For all of these reasons, the NRC expects no significant impacts on terrestrial resources associated with the proposed action.

Threatened and Endangered Species

Under Section 7 of the Endangered Species Act of 1973, as amended (ESA), Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (as appropriate), must ensure that actions the agency authorizes, funds, or carries out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

List of Species

A number of species in St. Lucie County are listed as threatened or endangered under the ESA, and other species are designated as meriting special protection or consideration. These include birds, fish, aquatic and terrestrial mammals, flowering plants, insects, and reptiles that could occur on or near St. Lucie Units 1 and 2 facility areas and possibly along the electrical transmission line ROW. The most common occurrences of threatened or endangered species near St. Lucie are five species of sea turtles that nest on Hutchinson Island beaches: Loggerhead turtles (*Caretta caretta*), Atlantic green turtles (*Chelonia mydas*), Kemp's Ridley turtles (*Lepidochelys kempii*), Leatherback turtles (*Dermochelys coriacea*), and Hawksbill turtles (*Eretmochelys imbricata*).

The following table identifies the species that the NRC considered in this EA that it had not previously assessed in SEIS–11 for license renewal because the species were not listed at that time.

TABLE OF FEDERALLY LISTED SPECIES OCCURRING IN ST. LUCIE COUNTY NOT PREVIOUSLY ASSESSED IN SEIS–11

Scientific name	Common name	ESA status[a]
Birds		
Calidris canutus ssp. *Rufa*	red knot	Candidate.
Charadrius melodus	piping plover	T.
Dendroica kirtlandii	Kirtland's warbler	E.
Grus americana	whooping Crane[b]	EXPN, XN.
Fish		
Pristis pectinata	smalltooth sawfish	E.
Mammals		
Puma concolor	puma	T/SA.
Reptiles		
Crocodylus acutus	American crocodile	T.
Gopherus polyphemus	gopher tortoise[c]	Candidate.

[a] E = endangered; T = threatened; T/SA = threatened due to similarity of appearance; EXPN, XN = experimental, nonessential.
[b] Experimental, nonessential populations of endangered species (e.g., red wolf) are treated as threatened species on public land, for consultation purposes, and as species proposed for listing on private land.
[c] The gopher tortoise is not listed by the FWS as occurring in St. Lucie County. The core of the species' current distribution in the eastern portion of its range occurs in central and north Florida (76 FR 45130), and FPL has reported the species' occurrence on the site and in the electrical transmission line ROWs.
Source: U.S. Fish and Wildlife Service.

Impacts on Aquatic Species

The licensee has a mitigation and monitoring program in place for the capture-release and protection of sea turtles that enter the intake canal. The NRC has consulted with NMFS since 1982 regarding sea turtle kills, captures, or incidental takes. A 2001 NMFS biological opinion analyzed the effects of the circulating cooling water system on certain sea turtles at St. Lucie. The 2001 NMFS biological opinion provides for limited incidental takes of threatened or endangered sea turtles. Correspondence between FPL, FWS, and NMFS in connection with the 2003 license renewal environmental review indicated that effects to endangered, threatened, or candidate species, including a variety of sea turtles and manatees, would not significantly change as a result of issuing a license renewal for St. Lucie. The NRC reinitiated formal consultation with NMFS in 2005 after the incidental take of a smalltooth sawfish (*Pristis pectinata*). The NRC added sea turtles to the reinitiation of formal consultation with NMFS in 2006 after St. Lucie exceeded the annual incidental take limit for sea turtles. The NRC provided NMFS with a biological assessment in 2007 (ADAMS Accession No. ML071700161) as an update regarding effects on certain sea turtle species up to that time.

By letter dated April 22, 2011, as part of this ongoing consultation, the NRC provided NMFS with information regarding potential impacts to listed aquatic species that would occur as a result of the proposed EPU. The NRC stated that the proposed EPU would increase the temperature of discharged water and the temperature of ocean water within the thermal plume surrounding the discharge point. However, the increase in the temperature would be relatively small, and the multiport diffusers on the discharge pipes would continue to rapidly dilute heated water and limit high temperatures to the mixing zone area specified in the IWFP. The NRC also analyzed the impacts of the higher temperatures on the smalltooth sawfish and various sea turtle species. The NRC concluded that because the smalltooth sawfish has a high thermal tolerance and sea turtles are able to tolerate a wide range of water temperatures, these species are unlikely to be adversely affected by higher water temperatures within the thermal plume at the St. Lucie discharge under EPU conditions. The NRC expects a response from NMFS in response to this ongoing consultation.

Should NMFS determine mitigation measures necessary as part of the ongoing consultation, the NRC could enforce those measures. Furthermore, as described in the "Aquatic Resource Impacts" section, if the data collected from FPL's thermal monitoring studies indicates a significant degradation to aquatic resources by exceeding Florida Surface Water Quality Standards or is inconsistent with the FCMP, FDEP could enforce additional abatement or mitigation measures to reduce the environmental impacts to acceptable levels.

Therefore, the NRC expects the proposed EPU would not have any significant impact on threatened and endangered aquatic species.

Impacts on Terrestrial Species

Planned construction-related activities associated with the proposed EPU primarily involve changes to existing structures, systems, and components internal to existing buildings and would not involve earth disturbance, with the exception of planned electrical transmission line modifications. As described in the "Terrestrial Resource Impacts" section, electrical transmission line modifications may require truck use within the transmission line ROW. The NRC concluded in SEIS–11 that transmission line maintenance practices would not lower terrestrial habitat quality or cause significant changes in wildlife populations. Because the proposed EPU operations would not result in any significant changes to the expected transmission maintenance activities evaluated for license renewal, the proposed EPU transmission modifications also should have no adverse effect on threatened and endangered terrestrial species. In addition, the transmission modifications should have no adverse effect on the additional species not previously assessed in SEIS–11 listed in the above table.

Traffic and worker activity in the developed parts of the plant site during the combined refueling outages and EPU modifications would be somewhat greater than a normal refueling outage. The NRC concluded in SEIS–11 that the continued operation of St. Lucie was not likely to adversely affect terrestrial wildlife. This conclusion was supported by consultation with FWS. Despite potential minor and temporary impacts from EPU-related worker activity, the effects from the proposed EPU should not exceed those potential effects evaluated in SEIS–11 and there should be no adverse effect on threatened or endangered species. In addition, the increased traffic and worker activity should have no adverse effect on the additional species not previously assessed in SEIS–11 listed in the above table.

Impacts on Critical Habitat

The West Indian manatee (*Trichechus manatus*) also has been documented at St. Lucie. Designated critical habitat for the West Indian manatee is located along the Indian River west of Hutchinson Island. No other critical habitat areas for endangered, threatened, or candidate species are located at the St. Lucie site or along the transmission line ROW. The NRC assessed potential impacts on the West Indian manatee from St. Lucie in SEIS–11, and the effects on its critical habitat from the proposed EPU should not exceed those assessed in SEIS–11. The incremental area affected by the increased thermal discharge due to the EPU should have negligible effects on the manatee's habitat. Therefore, the proposed EPU should have no adverse effect on the critical habitat for the West Indian manatee.

Historic and Archaeological Resources Impacts

Records at the Florida Master File in the Florida Division of Historical Resources identify five known archaeological sites located on or immediately adjacent to the property boundaries for St. Lucie, although no archaeological and historic architectural finds have been recorded on the site. None of these sites is listed on the National Register for Historic Places (NRHP). Sixteen properties are listed on the NRHP in St. Lucie County including one historic district. The Captain Hammond House in White City, approximately 6 mi (10 km) from St. Lucie, is the nearest property listed on the NRHP.

A moderate to high likelihood for the presence of significant prehistoric archaeological remains occurs along Blind Creek and the northern end of the St. Lucie boundary. As previously discussed, all EPU-related modifications would take place within existing buildings and facilities and the electrical transmission line ROW, which are not located near Blind Creek or the northern FPL property boundary. As discussed in the Land Use Impacts section, prior to any grading or grubbing conducted on previously disturbed areas for the two additional EPU-related parking areas, FPL performed a survey of the areas in accordance with the Site Conditions of Certification and followed best management practices to ensure that any cultural resources were protected. Because no change in ground disturbance or construction-related activities would occur outside of previously disturbed areas and existing electrical transmission line ROW, the NRC expects no significant impact from the proposed EPU-related modifications on historic and archaeological resources.

Socioeconomic Impacts

Potential socioeconomic impacts from the proposed EPU include increased demand for short-term housing, public services, and increased traffic in the region due to the temporary increase in the size of the workforce at St. Lucie required to implement the EPU. The proposed EPU also could generate increased tax revenues for the State and surrounding counties due to increased power generation.

Approximately 800 full-time employees work at St. Lucie. For the recently completed Unit 1 outage, this workforce was augmented by an additional 750 EPU workers on average, with a peak of 1,703 workers. For the mid-cycle Unit 1 outage, FPL estimates no additional staff. For the upcoming Unit 2 outage, FPL estimates an average of 1,058 workers, with a peak of 1,439 workers. Once EPU-related plant modifications have been completed, the size of the refueling outage workforce at St. Lucie would return to normal levels and would remain similar to pre-EPU levels, with no significant increases during future refueling outages. The size of the regular plant operations workforce would be unaffected by the proposed EPU.

The NRC expects most of the EPU plant modification workers to relocate temporarily to communities in St. Lucie, Martin, Indian River, and Palm Beach Counties, resulting in short-term increases in the local population along with increased demands for public services and housing. Because plant modification work would be temporary, most workers would stay in available rental homes, apartments, mobile homes, and camper-trailers. The 2010 American Community Survey 1-year estimate for vacant housing units reported 32,056 vacant housing units in St. Lucie County; 18,042 in Martin County; 23,236 in Indian River County; and 147,910 in Palm Beach County that could potentially ease the demand for local rental housing. Therefore, the NRC expects a temporary increase in plant employment for a short duration that would have little or no noticeable effect on the availability of housing in the region.

The additional number of refueling outage workers and truck material and equipment deliveries needed to support EPU-related plant modifications would cause short-term service impacts (restricted traffic flow and higher incident rates) on secondary roads in the immediate vicinity of St. Lucie. The licensee expects increased traffic volumes necessary to support implementation of the EPU-related modifications during the refueling outage. The NRC predicted transportation service impacts for refueling outages at St. Lucie during its license renewal term would be small and would not require mitigation. However, the number of temporary construction workers the NRC evaluated for SEIS–11 was less than the number of temporary construction workers required for the proposed EPU. Based on this information and that EPU-related plant modifications would occur during a normal refueling outage, there could be noticeable short-term (during certain hours of the day), level-of-service traffic impacts beyond what is experienced during normal outages. In the past, during periods of high traffic volume (i.e., morning and afternoon shift changes), FPL has attempted to stagger work schedules to minimize any impacts, has established satellite parking areas, and use buses to transport workers on and off the site. Local police officials have also been used to direct traffic entering and leaving the north and south ends of St. Lucie to minimize level-of-service impacts (ADAMS Accession No. ML12132A067).

St. Lucie currently pays annual real estate property taxes to the St. Lucie County school district, the County Board of Commissioners, the County fire district, and the South Florida Water Management District. The annual amount of future property taxes St. Lucie would pay could take into account the increased value of St. Lucie as a result of the EPU and increased power generation. But due to the short duration of EPU-related plant modification activities, there would be

little or no noticeable effect on tax revenues generated by additional temporary workers residing in St. Lucie County.

In total, the NRC expects no significant socioeconomic impacts from EPU-related plant modifications and future operations after implementation of the EPU in the vicinity of St. Lucie.

Environmental Justice Impact Analysis

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from activities associated with the proposed EPU at St. Lucie. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing in the vicinity of St. Lucie, and all are exposed to the same health and environmental effects generated from activities at St. Lucie.

The NRC considered the demographic composition of the area within a 50-mi (80.5-km) radius of St. Lucie to determine the location of minority and low-income populations using the U.S. Census Bureau data for 2010 and whether they may be affected by the proposed action.

According to 2010 census data, an estimated 1.3 million people live within a 50-mi (80.5-km) radius of St. Lucie within parts of nine counties. Minority populations within 50 mi (80.5 km) comprise 37 percent (approximately 466,800 persons). The largest minority group was Hispanic or Latino (of any race) (approximately 223,700 persons or 17.7 percent), followed by Black or African-American (approximately 203,900 persons or 16.2 percent). The 2010 census block groups containing minority populations were concentrated in Gifford (Indian River County), Fort Pierce (St. Lucie County), Pahokee (Palm Beach County near Lake Okeechobee), the agricultural areas around Lake Okeechobee, and Hobe Sound (Martin County).

According to the 2010 American Community Survey 1-Year Estimates data, an average of 10.6 percent of the population (267,000 persons) residing in counties in a 50 mi (80.5 km) of St. Lucie were considered low-income, living below the 2010 federal poverty threshold of $22,113 for a family of four. According to the 2010 American Community Survey 1-Year census estimates, the median household income for Florida was $44,409, while 12.0 percent of families and 16.5 percent of the State population were determined to be living below the Federal poverty threshold. St. Lucie County had a lower median household income average ($38,671) and higher percentages of families (14.1 percent) and individuals (18 percent) living below the poverty threshold, respectively.

Potential impacts to minority and low-income populations would mostly consist of environmental and socioeconomic effects (e.g., noise, dust, traffic, employment, and housing impacts). Radiation doses from plant operations after implementation of the EPU are expected to continue to remain well below regulatory limits.

Noise and dust impacts would be temporary and limited to onsite activities. Minority and low-income populations residing along site access roads could experience increased commuter vehicle traffic during shift changes. Increased demand for inexpensive rental housing during the EPU-related plant modifications could disproportionately affect low-income populations; however, due to the short duration of the EPU-related work and the availability of housing properties, impacts to minority and low-income populations would be of short duration and limited. According to the 2010 census information, there were approximately 221,244 vacant housing units in St. Lucie County and the surrounding three counties combined.

Based on this information and the analysis of human health and environmental impacts presented in this EA, the proposed EPU would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of St. Lucie.

Nonradiological Cumulative Impacts

The NRC considered potential cumulative impacts on the environment resulting from the incremental impact of the proposed EPU when added to other past, present, and reasonably foreseeable future actions in the vicinity of St. Lucie. Since the NRC is unaware of any other actions in the vicinity of St. Lucie, the NRC concludes that there are no significant nonradiological cumulative impacts.

Additionally, the NRC concluded that there would be no significant cumulative impacts to air quality, groundwater, threatened and endangered species, or historical and archaeological resources near St. Lucie because the contributory effect of ongoing actions within the region are regulated and monitored through a permitting process (e.g., National Pollutant Discharge Elimination System and 401/404 permits under the Clean Water Act) under State or Federal authority. In these cases, impacts are managed as long as these actions comply with their respective permits and conditions of certification.

Nonradiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant nonradiological impacts. Table 1 summarizes the nonradiological environmental impacts of the proposed EPU at St. Lucie.

TABLE 1—SUMMARY OF NONRADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	No significant impacts on land use conditions and aesthetic resources in the vicinity of St. Lucie.
Air Quality	No significant impacts to air quality from temporary air quality impacts from vehicle emissions related to EPU construction workforce.
Water Use	No significant changes to impacts caused by current operations. No significant impacts on groundwater or surface water resources.
Aquatic Resources	No significant changes to impacts caused by current operation due to impingement, entrainment, and thermal discharges.
Terrestrial Resources	No significant changes to impacts caused by current operations. No significant impacts to terrestrial resources.
Threatened and Endangered Species	No significant changes to impacts caused by current operations. The NRC expects NMFS to issue a biological opinion on sea turtles and the small tooth sawfish in the near future.
Historic and Archaeological Resources	No significant impacts to historic and archaeological resources onsite or in the vicinity of St. Lucie.
Socioeconomics	No significant changes to impacts caused by current operations. No significant socioeconomic impacts from EPU-related temporary increase in workforce.

TABLE 1—SUMMARY OF NONRADIOLOGICAL ENVIRONMENTAL IMPACTS—Continued

Environmental Justice	No disproportionately high or adverse human health and environmental effects on minority and low-income populations in the vicinity of St. Lucie.
Cumulative Impacts	No significant changes to impacts caused by current operations.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents and Solid Waste

St. Lucie uses waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and EPA radiation safety standards. The licensee's evaluation of plant operation under proposed EPU conditions show that no physical changes would be needed to the radioactive gaseous, liquid, or solid waste systems. Therefore, the NRC has determined that the impact from the proposed EPU on the radioactive gaseous, liquid, and solid waste systems would not be significant.

Radioactive Gaseous Effluents

The radioactive gaseous system manages radioactive gases generated during the nuclear fission process and is part of the gaseous waste management system. Radioactive gaseous wastes are principally activation gases and fission product radioactive noble gases resulting from process operations, including continuous cleanup of the reactor coolant system, gases used for tank cover gas, and gases collected during venting. The licensee's evaluation determined that implementation of the proposed EPU would not significantly increase the inventory of carrier gases normally processed in the gaseous waste management system, because plant system functions are not changing, and the volume inputs remain the same. The licensee's analysis also showed that the proposed EPU would result in an increase (a bounding maximum of 13.2 percent for all noble gases, particulates, radioiodines, and tritium) in the equilibrium radioactivity in the reactor coolant, which in turn increases the radioactivity in the waste disposal systems and radioactive gases released from the plant.

The licensee's evaluation concluded that the proposed EPU would not change the radioactive gaseous waste system's design function and reliability to safely control and process the waste. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1302 and the as low as is reasonably achievable (ALARA) dose objectives in 10 CFR Part 50, Appendix I. Therefore, the NRC has determined that the impact from the proposed EPU on the management of radioactive gaseous effluents would not be significant.

Radioactive Liquid Effluents

The liquid waste management system collects, processes, and prepares radioactive liquid waste for disposal. Radioactive liquid wastes include liquids from various equipment drains, floor drains, the chemical and volume control system, steam generator blowdown, chemistry laboratory drains, laundry drains, decontamination area drains, and liquids used to transfer solid radioactive waste. The licensee's evaluation shows that the proposed EPU implementation would not significantly increase the inventory of liquid normally processed by the liquid waste management system. This is because the system functions are not changing and the volume inputs remain the same. The proposed EPU would result in an increase in the equilibrium radioactivity in the reactor coolant (12.2 percent), which in turn would impact the concentrations of radioactive nuclides in the waste disposal systems.

The licensee stated that because the composition of the radioactive material in the waste and the volume of radioactive material processed through the system are not expected to significantly change, the current design and operation of the radioactive liquid waste system will accommodate the effects of the proposed EPU. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive liquid releases within the dose limits of 10 CFR 20.1302 and ALARA dose objectives in 10 CFR Part 50, Appendix I. Therefore, the NRC has determined that the impact from the proposed EPU on the management of radioactive liquid effluents would not be significant.

Radioactive Solid Wastes

Radioactive solid wastes include solids recovered from the reactor coolant systems, solids that come into contact with the radioactive liquids or gases, and solids used in the reactor coolant system operation. The licensee evaluated the potential effects of the proposed EPU on the solid waste management system. The largest volume of radioactive solid waste is low-level radioactive waste, which includes bead resin, spent filters, and dry active waste (DAW) that result from routine plant operation, refueling outages, and routine maintenance. The DAW includes paper, plastic, wood, rubber, glass, floor sweepings, cloth, metal, and other types of waste generated during routine maintenance and outages.

The licensee states that the proposed EPU would not have a significant effect on the generation of radioactive solid waste volume from the primary reactor coolant and secondary side systems because system functions are not changing, and the volume inputs remain consistent with historical generation rates. The waste can be handled by the solid waste management system without modification. The equipment is designed and operated to process the waste into a form that minimizes potential harm to the workers and the environment. Waste processing areas are monitored for radiation, and safety features are in place to ensure worker doses are maintained within regulatory limits. The proposed EPU would not generate a new type of waste or create a new waste stream. Therefore, the NRC has determined that the impact from the proposed EPU on the management of radioactive solid waste would not be significant.

Occupational Radiation Dose at the EPU Power Level

The licensee stated that the in-plant radiation sources are expected to increase approximately linearly with the proposed increase in core power level of 12.2 percent. For the radiological impact analyses, the licensee conservatively assumed an increase to the licensed thermal power level from 2,700 MWt to 3,030 MWt or 12.2 percent, although the EPU request is for an increase to the licensed thermal power level to 3,020 MWt or 11.85 percent. To protect the workers, the licensee's radiation protection program monitors radiation levels throughout the plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR Part 20 and ALARA.

In addition to the work controls implemented by the radiation protection program, permanent and temporary shielding is used throughout St. Lucie to protect plant personnel against radiation from the reactor and auxiliary systems. The licensee determined that the current shielding design, which uses conservative analytical techniques to establish the shielding requirements, is adequate to offset the increased radiation levels that are expected to occur from the proposed EPU. Based on these findings, the NRC does not expect the proposed EPU to significantly affect radiation levels within the plant and, therefore, there would not be a significant radiological impact to the workers.

Offsite Doses at the EPU Power Level

The primary sources of offsite dose to members of the public from St. Lucie are radioactive gaseous and liquid effluents. The licensee predicts that because of the EPU, maximum annual total and organ doses would increase by 12.2 percent. This would still be within the NRC's regulatory limits. As previously discussed, operation at the EPU power level will not change the ability of the radioactive gaseous and liquid waste management systems to perform their intended functions. Also, there would be no change to the radiation monitoring system and procedures used to control the release of radioactive effluents in accordance with NRC radiation protection standards in 10 CFR Part 20 and 10 CFR Part 50, Appendix I.

Based on the above, the offsite radiation dose to members of the public would continue to be within NRC and EPA regulatory limits and, therefore, would not be significant.

Spent Nuclear Fuel

Spent fuel from St. Lucie is stored in the plant's spent fuel pool. St. Lucie is licensed to use uranium-dioxide fuel that has a maximum enrichment of 4.5 percent by weight uranium-235. Approval of the proposed EPU would increase the maximum fuel enrichment to 4.6 percent by weight uranium-235. The average fuel assembly discharge burnup for the proposed EPU is expected to be limited to 49,000 megawatt days per metric ton uranium (MWd/MTU) with no fuel pins exceeding the maximum fuel rod burnup limit of 62,000 MWd/MTU for Unit 1 and 60,000 MWd/MTU for Unit 2. The FPL's fuel reload design goals will maintain the St. Lucie fuel cycles within the limits bounded by the impacts analyzed in 10 CFR Part 51, Table S–3—Uranium Fuel Cycle Environmental Data and Table S–4—Environmental Impact of Transportation of Fuel and Waste to and From One Light-Water-Cooled Nuclear Power Reactor, as supplemented by NUREG–1437, Volume 1, Addendum1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report, Section 6.3—Transportation Table 9.1, Summary of findings on NEPA issues for license renewal of nuclear power plants" (ADAMS Accession No. ML040690720). Therefore, there would be no significant impacts resulting from spent nuclear fuel.

Postulated Design-Basis Accident Doses

Both the licensee and the NRC evaluated postulated design-basis accidents to ensure that St. Lucie can withstand normal and abnormal transients and a broad spectrum of postulated accidents with reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner.

The licensee performed analyses according to the Alternative Radiological Source Term methodology, updated with input and assumptions consistent with the proposed EPU. For each design-basis accident, radiological consequence analyses were performed using the guidance in NRC Regulatory Guide 1.183, "Alternative Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors" (ADAMS Accession No. ML003716792). Accident-specific total effective dose equivalent was determined at the exclusion area boundary, at the low-population zone, and in the control room. The analyses also include the evaluation of the waste gas decay tank rupture event. The licensee concluded that the calculated doses meet the acceptance criteria specified in 10 CFR 50.67 and 10 CFR Part 50, Appendix A, General Design Criterion 19.

The NRC is evaluating FPL's EPU applications to independently determine whether they are acceptable to approve. The results of the NRC evaluation and conclusion will be documented in a Safety Evaluation Report that will be publicly available. The NRC will only approve the proposed EPU if the radiological consequences of design-basis accidents will not have a significant impact.

Radiological Cumulative Impacts

The radiological dose limits for protection of the public and workers have been developed by the NRC and EPA to address the cumulative impact of acute and long-term exposure to radiation and radioactive material. These dose limits are codified in 10 CFR Part 20 and 40 CFR Part 190.

The cumulative radiation doses to the public and workers are required to be within the regulations cited above. The annual public dose limit of 25 millirem (0.25 millisieverts) in 40 CFR Part 190 applies to all reactors that may be on a site and includes any other nearby nuclear power reactor facilities. No other nuclear power reactor or uranium fuel cycle facility is located near St. Lucie. The NRC staff reviewed several years of radiation dose data contained in the FPL's annual radioactive effluent release reports for St. Lucie. The data demonstrate that the dose to members of the public from radioactive effluents is well within the limits of 10 CFR Part 20 and 40 CFR Part 190. To evaluate the projected dose at the EPU power level for St. Lucie, the NRC increased the actual dose data contained in the reports by 12 percent. The projected doses remained well within regulatory limits. Therefore, the NRC concludes that there would not be a significant cumulative radiological impact to members of the public from increased radioactive effluents from St. Lucie at the proposed EPU power level.

As previously discussed, FPL has a radiation protection program that maintains worker doses within the dose limits in 10 CFR Part 20 during all phases of St. Lucie operations. The NRC expects continued compliance with regulatory dose limits during operation at the proposed EPU power level. Therefore, the NRC staff concludes that operation of St. Lucie at the proposed EPU levels would not result in a significant impact to worker cumulative radiological dose.

Radiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant radiological impacts. Table 2 summarizes the radiological environmental impacts of the proposed EPU at St. Lucie.

TABLE 2—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Radioactive Gaseous Effluents.	Amount of additional radioactive gaseous effluents generated would be handled by the existing system.
Radioactive Liquid Effluents	Amount of additional radioactive liquid effluents generated would be handled by the existing system.
Radioactive Solid Waste	Amount of additional radioactive solid waste generated would be handled by the existing system.
Occupational Radiation Doses.	Occupational doses would continue to be maintained within NRC limits.
Offsite Radiation Doses	Radiation doses to members of the public would remain below NRC and EPA radiation protection standards.
Spent Nuclear Fuel	The spent fuel characteristics will remain within the bounding criteria used in the impact analysis in 10 CFR Part 51, Table S–3 and Table S–4.
Postulated Design-Basis Accident Doses.	Calculated doses for postulated design-basis accidents would remain within NRC limits.
Cumulative Radiological	Radiation doses to the public and plant workers would remain below NRC and EPA radiation protection standards.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed EPU (i.e., the "no-action" alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU was not approved for St. Lucie, other agencies and electric power organizations may be required to pursue other means, such as fossil fuel or alternative fuel power generation, in order to provide electric generation capacity to offset future demand. Construction and operation of such a fossil-fueled or alternative-fueled facility could result in impacts in air quality, land use, and waste management greater than those identified for the proposed EPU at St. Lucie. Furthermore, the proposed EPU does not involve environmental impacts that are significantly different from those originally indentified in the St. Lucie Units 1 and 2 FESs and SEIS–11.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the FESs or SEIS–11.

Agencies and Persons Consulted

Based upon a letter dated May 2, 2003, from Michael N. Stephens of the Florida Department of Health, Bureau of Radiation Control, to Brenda L. Mozafari, Senior Project Manager, U.S. Nuclear Regulatory Commission, the State of Florida does not desire notification of issuance of license amendments. Therefore, the State of Florida was not consulted. Consultations held with NMFS, FDEP, and FDCA are discussed and documented above.

III. Finding of No Significant Impact

Based on the details provided in the EA, the NRC concludes that granting the proposed EPU license amendment is not expected to cause impacts significantly greater than current operations. The proposed action implementing the EPU for St. Lucie will not have a significant effect on the quality of the human environment because no significant permanent changes are involved, and the temporary impacts are within previously disturbed areas at the site and within the capacity of the plant systems. Accordingly, the NRC has determined it is not necessary to prepare an environmental impact statement for the proposed action.

Dated at Rockville, Maryland, this 25th day of June 2012.

For the Nuclear Regulatory Commission.

Tracy J. Orf,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Summary of Comments on the Draft Environmental Assessment and Draft Finding of No Significant Impact

Background

The U.S. Nuclear Regulatory Commission (NRC) staff published a notice in the **Federal Register** requesting public review and comment on the draft environmental assessment (EA) and draft finding of no significant impact (FONSI) on January 6, 2012 (77 FR 813), and established February 6, 2012, as the deadline for submitting public comments. The NRC received comments and supplemental information from Florida Power & Light Company (FPL or the licensee) and from a member of the public. The correspondence associated with the comments is provided in the NRC's Agencywide Documents Access and Management System (ADAMS) and available as a matter of public record. Table 1 is a summary of each correspondence, including the name and affiliation of each commenter, a document letter code, the ADAMS accession number, and the number of comments.

In addition, the NRC staff made editorial changes to the draft EA, specifically the Threatened and Endangered Species section. These editorial changes did not change the conclusion of the FONSI.

TABLE 1—COMMENTS RECEIVED ON THE ST. LUCIE EXTENDED POWER UPRATE (EPU)

Last name	First name	Affiliation	Document letter	ADAMS accession number	Number of comments
Anderson	Richard L.	Florida Power & Light	A	ML12037A063	6
Johnson	Edward W.	Self	B	ML12044A127	8

Comment Review

The NRC staff reviewed each comment letter and all comments related to similar issues and grouped topics together. This attachment presents the comments, or summaries of comments, along with the NRC staff's responses. When comments have resulted in a modification to the draft EA, those changes are noted in the NRC staff's response.

Major Issues and Topics of Concern

The staff grouped comments into the following categories: supplemental information provided to the NRC, Aquatic Resources, and Nuclear Safety (see Table 2). Next to each set of grouped comments is a four-component code corresponding to: the power plant ("SL" for St. Lucie); the document letter (A–B) that corresponds to the document submitter from Table 1; the number of the comment from that particular commenter; and the two-letter category comment code from Table 2.

TABLE 2--DRAFT EA COMMENT CATEGORIES AND COMMENT CODES

Comment category	Comment code
Supplemental Information	SI
Aquatic Resources	AR
Nuclear Safety	NS

Supplemental Information (SI)

Comment: SL–A–1–AR

In a January 30, 2012, letter to the NRC, FPL suggested changes to the draft EA based on supplemental information provided in its letter to the NRC dated January 11, 2011 (ADAMS Accession No. ML110210023). The draft EA indicated that the predicted discharge temperature increase resulting from the St. Lucie EPU would be 2 °F (1.1 °C) above the current discharge temperature. The licensee clarified that the predicted temperature increase would be 3 °F (1.7 °C) and that FPL had requested from Florida Department of Environmental Protection (FDEP) a 2 °F (1.1 °C) increase to the heated water discharge temperature limit, from 113 °F (45 °C) before the EPU to 115 °F (46.1 °C) to account for the 3 °F (1.7 °C) increase after EPU completion at Units 1 and 2.

NRC Response

The NRC staff reviewed the information and incorporated the change from a 2 °F (1.1 °C) temperature increase to a 3 °F (1.7 °C) temperature increase. Because the discharge temperature limit did not change, consideration of the above comment does not change the conclusion of the FONSI.

Comment: SL–A–2–SI

The licensee provided new information on the number of additional workers expected during the EPU-related outages. The draft EA stated that an additional 1,000 construction workers would be needed during each outage, with a potential peak of 1,400 additional construction workers. The licensee revised this estimate in its comment to an average of 2,100 workers per outage, with a peak of 3,000. This comment prompted the NRC to submit a request for additional information to FPL on April 18, 2012. The licensee's response to the request was provided on May 2, 2012 (ADAMS Accession No. ML12132A067). In their response, FPL clarified that three of the four necessary EPU-related outages had already occurred, with an additional outage planned for the fall of 2012 for Unit 2. For the recently completed outage, the average number of additional workers was 750, with a peak of 1,703. The upcoming outage expects an average of 1,058 additional workers, with a peak of 1,439.

The licensee provided information requested by the NRC in the areas of land use, traffic impacts, air quality impacts, terrestrial impacts, and cultural impacts. For land use impacts, FPL provided more detailed information on the two parking lots that were created for the EPU-related outages, including that surveys were conducted and best management practices employed to minimize impacts on threatened and endangered species, terrestrial resources, and cultural resources. For traffic impacts, FPL provided the transportation analysis it used to determine impact significance, as well as examples of how FPL has mitigated traffic impacts in the past, which include shift staggering, shuttling workers from offsite parking areas, and employing local police to direct traffic onsite during peak conditions. For air quality impacts, FPL provided an assessment of the potential impacts of an additional 1,400 to 3,000 construction workers, including the results of a traffic study and calculations for the amount of fugitive particulate matter emissions expected to result from the increased workforce. The licensee determined that the workforce increase would not trigger air quality violations under the Clean Air Act and would remain below FDEP regulations for unpermitted emissions.

NRC Response

The NRC staff reviewed this additional information and determined that the additional workers during EPU-related outages in conjunction with the mitigating strategies that FPL implemented to account for the increase have no significant impacts in the areas of socioeconomic, terrestrial resource, air quality, and land use. The NRC made the necessary changes to the draft EA in the areas of socioeconomic, terrestrial resource, air quality, and land use impacts. Consideration of the above comment does not change the conclusion of the FONSI.

Comment: SL–A–3–SI

In a January 30, 2012, letter to the NRC, FPL suggested changes to the draft EA based on supplemental information provided as Attachment 2, "St. Lucie Plant Water Usage 2004–2009" (ADAMS Accession No. ML12037A063). The draft EA stated that the plant uses approximately 131,500 gallons (498 m^3) of water per day. The draft EA did not specify that this was a per unit withdrawal rate. The licensee provided information based on plant records developed from FPL's Ft. Pierce Utilities water bills for 2004 to 2009, showing that the approximate water usage is 154,800 gallons per unit per day (586 m^3), or a combined average water usage rate of approximately 309,565 gallons (1172 m^3).

NRC Response

The NRC staff reviewed the information and incorporated the change to the draft EA in the area of Water Use Impacts, Groundwater from 131,500 gallons (497,782 L) of water per day to 309,565 gallons (1,171,831 L) per day, or approximately 154,800 gallons (585,981 L) per unit per day. Under the EPU, FPL does not expect to significantly change the amount of freshwater currently used or its supply source. Consideration of the above comment does not change the conclusion of the FONSI.

Comment: SL–A–4–SI

In a January 30, 2012, letter to the NRC, FPL suggested changes to the draft EA based on supplemental information provided in its letter to the NRC dated January 11, 2011 (ADAMS Accession No. ML110210023). The draft EA stated that FDEP had issued a temporary variance for a temperature increase of heated water discharge from 113 °F (45 °C) before the EPU to 115 °F (46.1 °C) after EPU completion at Units 1 and 2. The licensee clarified that the FDEP's change to the St. Lucie Plant's individual wastewater facility permit

(IWFP) was a modification, not a temporary variance. The permit modification was issued on December 21, 2010, and was accompanied by an Administrative Order requiring FPL to perform pre-EPU biological monitoring and a minimum of two years of post-EPU thermal and biological monitoring in the vicinity of St. Lucie.

NRC Response

The NRC staff reviewed the information and incorporated the change from referring to the FDEP change as a temporary variance to a permit modification. Consideration of the above comment does not change the conclusion of the FONSI.

Aquatic Resources (AR)

Comment: SL–A–5–AR

The licensee disagreed with a statement in the draft EA that the proposed increase in temperature after EPU implementation would exceed Florida Surface Water Quality Standards. The licensee explained that, though St. Lucie's heated water discharge currently exceeds the Thermal Surface Water Criteria for open waters, FPL was granted a zone of mixing variance by FDEP. The FDEP also granted FPL an increase of 2 °F (1.1 °C) in the instantaneous discharge temperature limit in the IWFP modification following EPU implementation. The licensee stated that it performs biological and thermal monitoring studies in accordance with the IWFP, which demonstrate its continued compliance with the State's thermal standards following EPU implementation.

NRC Response

The NRC staff reviewed the information and incorporated the change into the final EA. While the draft EA stated that the increase in temperature after EPU implementation would exceed Florida Surface Water Quality Standards, the final EA states that EPU implementation will continue to exceed Thermal Surface Water Criteria established by FDEP, but that FPL will continue to meet its FDEP mixing zone variance limits and will continue to perform studies to assess any potential thermal impacts. Consideration of the above comment does not change the conclusion of the FONSI.

Comment: SL–B–2–AR

The commenter is concerned that St. Lucie already withdraws approximately 1 million gallons per second and that this withdrawal amount should increase another 12 percent if a 12 percent power increase is permitted. The commenter states that withdrawal of an additional 100,000 gallons per second should be permitted by the NRC to avoid a temperature increase to the plant's heated water discharge.

NRC Response

St. Lucie's thermal discharge limits are permitted and maintained by FDEP. The NRC has no regulatory authority over thermal discharge limits or water withdrawal permits. Therefore, no change was made to the final EA based on this comment.

Comment: SL–B–3–AR

The commenter is concerned that the applicant's statement that the seawater temperature beyond the plant's mixing zone of 95 °F (35 °C) is incorrect. The commenter would like verification of this temperature and provides information that the average water temperature in that area should be closer to an ambient temperature of 79 °F (26.1 °C). The commenter challenges the applicant's claim of an ambient water temperature of 95 °F (35 °C) and believes that an additional temperature increase after EPU implementation will have detrimental effects on aquatic resources.

NRC Response

As discussed in the "Aquatic Resource Impacts" section, a thermal discharge study that was conducted for the proposed EPU predicts no increase in temperature higher than 96 °F (35.5 °C) within 6 ft (1.8 m) of the bottom of the ocean floor and within 24 ft (7.3 m) from the ocean surface as a result of heated water discharged from the multiport diffuser. The same study also predicts that heated water discharged from the "Y" diffuser would not increase the ocean water temperature higher than 96 °F (35.5 °C) within 2 ft (0.6 m) of the bottom of the ocean floor and within 25 ft (17 m) from the ocean surface. Based on this analysis, surface water temperature would remain below 94 °F (34.4 °C). Thermal studies conducted for St. Lucie prior to its operation and summarized in SEIS–11 predicted there would be minimal impacts to aquatic biota from diffuser discharges that result in a surface temperature less than 97 °F (36.1 °C). Therefore, no change was made to the final EA based on this comment.

Comment: SL–B–4–AR

The commenter is concerned about the effects of thermal discharge temperatures and chemical treatment on microscopic ocean organisms.

NRC Response

St. Lucie's thermal discharge limits are permitted and maintained by FDEP. The NRC has no regulatory authority over thermal discharge limits or water withdrawal permits. St. Lucie does inject chlorine in the form of sodium hypochlorate into seawater upstream of the intake cooling water system to control microorganisms, but these chemical discharges are also regulated by FDEP. After EPU implementation, these chemical discharges are not expected to exceed IWFP limitations and will continue to be monitored and regulated by FDEP. Therefore, no change was made to the final EA based on this comment.

Comment: SL–B–6–AR

The commenter provided information on the August 2011 jellyfish incursion incident at St. Lucie and stated that the incident was not reported publicly until December 2011. The commenter wants the NRC to increase the timely reporting of such events to allow precautionary safety awareness and evacuation to proceed.

NRC Response

The NRC was informed about the jellyfish intrusion incident, which occurred between August 20, 2011 and August 24, 2011, via letter from FPL on September 20, 2011. The letter was submitted as part of St. Lucie's Environmental Protection Plan as an "Unusual or Important Environmental Event—Reportable Fish Kill." A License Event Report was also submitted by FPL to the NRC describing the Unit 1 manual reactor trip that resulted from the jellyfish influx. Both are publicly available and can be accessed in ADAMS under Accession Nos. ML11270A098 and ML11301A071, respectively. Evacuation precautions were not necessary during this incident because FPL manually shut down the plant until the jellyfish incursion could be resolved. Therefore, no change was made to the final EA based on this comment. (For a more detailed discussion on this incident, the commenter is referred to Section 5.2 and Section 5.4.4 of the NRC's Essential Fish Habitat Assessment, published in February 2012 (ADAMS Accession No. ML12053A345)).

Comment: SL–B–7–AR

The commenter is concerned about the potentially harmful effects of once-through cooling systems, specifically the effects of entrainment and impingement on marine life.

NRC Response

During St. Lucie's license renewal review, the NRC assessed the environmental impacts of entrainment, impingement, and heat shock from St. Lucie's once-through cooling system in Sections 4.1.1, 4.1.2, and 4.1.3 of the SEIS–11 (ADAMS Accession No. ML031410445). The NRC does not expect that implementation of the EPU would increase the impacts of entrainment, impingement, and heat shock at St. Lucie beyond the small levels it found for current operation. Therefore, the NRC made no change to the final EA based on this comment.

Comment: SL–B–8–AR

The commenter is concerned that smaller fish and organisms that are entrained by the cooling system may be scalded before being discharged into the waterway, or that those that are pulverized in the system will be released into the water, forming a sediment cloud that will block light from the ocean floor and cause a loss of oxygen.

NRC Response

The proposed EPU will not result in an increase in the amount or rate of water withdrawn from or discharged to the Atlantic Ocean, so the impacts of entrainment will remain consistent with current operating levels. Also, the NRC staff always assumes a 100 percent mortality rate for any organisms that are entrained by the cooling system, and determined that implementation of the EPU would not increase the level of entrainment mortality rate or level of impact. The NRC concluded that scouring caused by discharged cooling water would have a small level of impact at St. Lucie, as discussed in Sections 4.1 and 4.1.3 of SEIS–11. The NRC also concluded that low dissolved oxygen in the discharged water would have a small level of impact, as discussed in Section 4.1 of SEIS–11. Therefore, the NRC made no change to the final EA based on this comment.

Nuclear Safety (NS)

Comments: SL–B–1–NS; SL–B–5–NS

The commenter is concerned about safety issues at the plant. Most notably, his comments are related to the age of the reactors and safety concerns over permitting a 12 percent power increase on reactors of that age. The commenter is concerned that an increase in heat generated would potentially put stress on the internal components of the plant due to the age of the components and increase risk of failure.

NRC Response

The St. Lucie Units 1 and 2 were granted, consistent with NRC regulations, a 40-year operating licenses in 1976 and 1983, respectively. The NRC requires licensees to test, monitor, and inspect the condition of safety equipment and to maintain that equipment in reliable operating condition over the operating life of the plant. The NRC also requires licensees to continually correct deficiencies that could affect plant safety (e.g., leaking valves, degraded or failed components due to aging or operational events). Over the years, FPL has also upgraded equipment or installed new equipment to replace or supplement original systems. The testing, monitoring, inspection, maintenance, and replacement of plant equipment provide reasonable assurance that this equipment will perform its intended safety functions during the 40-year license period. This conclusion applies both to operations under the current license and operations under EPU conditions.

In 2003, the NRC approved renewal of the operating licenses for St. Lucie, Units 1 and 2 for a period of 20 additional years, extending the operating licenses to 2036 and 2043, respectively. The safety evaluation report documenting the staff's technical review can be found in NUREG–1779, "Safety Evaluation Report Related to the License Renewal of the St. Lucie, Units 1 and 2" (ADAMS Accession No. ML031890043). The NRC staff's review concluded that the licensee's management of the effects of aging on the functionality of structures and components met the NRC's established requirements (described in Title 10 of the *Code of Federal Regulations* Part 54).

The NRC's safety regulations are based on the Atomic Energy Act of 1954, as amended, and require a finding of reasonable assurance that the activities authorized by an operating license (or an amendment thereto) can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the NRC's regulations. With respect to the proposed EPU, the NRC will likewise decide—based on the NRC staff's safety evaluation—whether there is reasonable assurance that the health and safety of the public will not be endangered by operation under the proposed EPU conditions and whether the authorized activities will be conducted in compliance with the NRC's regulations. The NRC will document its review of the effect of the EPU on aging management programs at St. Lucie in the relevant subsections of its safety evaluation.

Therefore, no change was made to the final EA based on these comments.

[FR Doc. 2012–16552 Filed 7–5–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30124]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 29, 2012.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June 2012. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 24, 2012, and should be accompanied by proof of service on the applicant, 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 Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

Old Mutual Funds II [File No. 811–4391]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Heitman REIT Fund, a series of FundVantage Trust, and, on June 4, 2012, made a final distribution to shareholders based on net asset value. Expenses of $104,000 incurred in connection with the

reorganization were paid by Old Mutual Capital, applicant's investment adviser.

Filing Date: The application was filed on June 5, 2012.

Applicant's Address: 4643 South Ulster Street, Suite 800, Denver, CO 80237.

Milestone Funds [File No. 811–8620]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Milestone Obligations Fund, a series of AdviserOne Funds and, on January 20, 2012, made a final distribution to shareholders based on net asset value. Expenses of approximately $189,132 incurred in connection with the reorganization were paid by CLS Investments, LLC, applicant's investment advisers and Gemini Fund Services, LLC, investment adviser to the acquiring fund.

Filing Dates: The application was filed on May 11, 2012, and amended on June 7, 2012.

Applicant's Address: 4020 S. 147th St., Omaha, NE 68137.

WT Mutual Fund [File No. 811–8648]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to corresponding series of Wilmington Funds and, on March 12, 2012, made a final distribution to shareholders based on net asset value. Expenses of $576,617 incurred in connection with the reorganization were paid by the investment adviser on behalf of each fund.

Filing Date: The application was filed on May 15, 2012.

Applicant's Address: 1100 North Market Street, Wilmington, DE 19890.

Value Line New York Tax Exempt Trust [File No. 811–5052]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to The Value Line Tax Exempt Fund, Inc. and, on May 18, 2012, made a final distribution to shareholders based on net asset value. Expenses of $154,821 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on June 8, 2012.

Applicant's Address: 7 Times Square, 21st Floor, New York, NY 10036.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16547 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; In the Matter of A–Power Energy Generation Systems, Ltd.

July 3, 2012.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of A–Power Energy Generation Systems, Ltd. ("A–Power") because, among other things, it: (1) Has not filed any periodic reports since the period ended December 31, 2009; and (2) failed to disclose that its independent auditor resigned after A–Power's management informed the auditor that it did not intend to regain current filing status with the Commission.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, *it is ordered*, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of A-Power is suspended for the period from 9:30 a.m. EDT on July 3, 2012, through 11:59 p.m. EDT on July 17, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–16654 Filed 7–3–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67305; File No. SR–NYSEMKT–2012–12]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to Rule 960NY in Order To Extend the Penny Pilot in Options Classes in Certain Issues Through December 31, 2012

June 28, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 15, 2012, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Rule 960NY in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program") previously approved by the Securities and Exchange Commission ("Commission") through December 31, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend Commentary .02 to Rule 960NY to extend the time period of the Pilot Program,[4] which is currently scheduled to expire on June 30, 2012 through December 31, 2012. The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following July 1, 2012.[5]

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that extending the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEMKT–2012–12 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–NYSEMKT–2012–12. 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

[4] *See* Securities Exchange Act Release No. 63393 (November 30, 2010), 75 FR 75715 (December 6, 2010) (SR–NYSEAmex–2010–107).

[5] The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEMKT–2012–12 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16515 Filed 7–5–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67306; File No. SR–BATS–2012–025]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Penny Pilot Program

June 28, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 19, 2012, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)(iii) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the BATS Options Market ("BATS Options") to extend through December 31, 2012, the Penny Pilot Program ("Penny Pilot") in options classes in certain issues ("Pilot Program") previously approved by the Commission.[6]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend through December 31, 2012, the Penny Pilot in options classes in the Pilot Program as previously approved by the Commission, and to provide a revised date for adding replacement issues to the Pilot Program. The Exchange proposes that any Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2012. The replacement issues will be selected based on trading activity for the six month period beginning December 1, 2011, and ending May 31, 2012.

In the Exchange's filing to propose the rules to govern BATS Options,[7] the Exchange proposed commencing operations for BATS Options by trading all options classes that were, as of such date, traded by other options exchanges pursuant to the Penny Pilot and then expanding the Penny Pilot on a quarterly basis, 75 classes at a time, through August 2010. Consistent with this proposal, since it commenced operations the Exchange has twice expanded the options classes subject to the Penny Pilot.[8] The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to extend the Pilot Program prior to its expiration on June 30, 2012. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] The rules of BATS Options, including rules applicable to BATS Options' participation in the Penny Pilot, were approved on January 26, 2010. *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031). BATS Options commenced operations on February 26, 2010. The Penny Pilot was extended for BATS Options through June 30, 2012. *See* Securities Exchange Act Release No. 65965 (December 15, 2011), 76 FR 79244 (December 21, 2011) (SR–BATS–2011–050).

[7] *See* Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 (December 8, 2009) (SR–BATS–2009–031) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Trading of Options on the BATS Options Exchange).

[8] *See* Securities Exchange Act Release No. 62595 (July 29, 2010), 75 FR 47043 (August 4, 2010) (SR–BATS–2010–019); Securities Exchange Act Release No. 62033 (May 4, 2010), 75 FR 26301 (May 11, 2010) (SR–BATS–2010–009).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[15] However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[17] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[18]

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.

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–BATS–2012–025 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–BATS–2012–025.* 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–BATS–2012–025* and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16516 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* note 6.

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67307; File No. SR–NYSEArca–2012–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to NYSE Arca Options Rule 6.72 in Order To Extend the Penny Pilot in Options Classes in Certain Issues Through December 31, 2012

June 28, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 15, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to NYSE Arca Options Rule 6.72 in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program") previously approved by the Securities and Exchange Commission ("Commission") through December 31, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the Exchange's principal office and at

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend Commentary .02 to NYSE Arca Options Rule 6.72 to extend the time period of the Pilot Program,[4] which is currently scheduled to expire on June 30, 2012 through December 31, 2012. The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following July 1, 2012.[5]

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that extending the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEArca–2012–65 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–NYSEArca–2012–65*. 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

[4] *See* Securities Exchange Act Release No. 63376 (November 24, 2010), 75 FR 75527 (December 3, 2010) (SR–NYSEArca–2010–104).

[5] The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEArca–2012–65* and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16517 Filed 7–5–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67315; File No. SR–NYSEMKT–2012–14]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Adopting Rules Governing the Listing and Trading of New Products Known as DIVS, OWLS, and RISKS

June 29, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 19, 2012, NYSE MKT LLC ("Exchange" or "NYSE MKT"), on behalf of NYSE Amex Options LLC ("NYSE Amex Options"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules governing the listing and trading of a new product known as DORS. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt rules governing the listing and trading of a new product known as DORS.[3] The Exchange believes that the product will give investors additional opportunities to manage risk by offering the ability to invest discretely in three instruments that, when taken together, represent the total return of a security over a certain period of time.

a. Generally

DORS are comprised of three components: DIVS, OWLS, and RISKS, each of which is described more fully below. Each component has a different risk/reward profile and will be able to be bought or sold separately to achieve a specific investment goal. The three components, when combined appropriately (i.e., long a DIVS, OWLS, and RISKS on the same underlying security, having the same expiration, where the OWLS and RISKS have identical strike prices), are expected to generate total returns that will attempt to replicate that of a long stock position held for the same duration.

DIVS—The phrase "Dividend Value of Stock" or the term "DIVS" refers to an option contract that returns to the investor a stream of periodic cash flows equivalent to the dividends paid by the underlying stock. An investor that holds a long DIVS contract will receive cash payments equal to the dividend paid by the underlying security. Such payment will occur on the "ex-dividend" date for the underlying security. The investor will continue to have the right to earn such dividend-equivalent cash payments as long as the investor remains long the DIVS contract up until such time as the DIVS contract expires. DIVS contracts will be European style and cannot be exercised prior to expiration.

OWLS—The phrase "Options With Limited Stock" or the term "OWLS" refers to an option contract that returns to the investor at expiration shares of the underlying security equal in value to the lesser of (1) the current value of the underlying security or (2) the strike price of the option contract. At expiration, regardless of how high the stock closes above the strike price of an OWLS contract, the holders of the contract will never receive more than shares of stock equivalent in value to the strike price of the OWLS contract. The risk/reward of a long OWLS position is similar to a buy/write or covered call position, less the dividends, if any. A long OWLS position offers an investor some limited downside protection in exchange for limiting his or her upside participation to the strike price of the OWLS contract. OWLS contracts will be European style and cannot be exercised prior to expiration.

RISKS—The phrase "Residual Interest in Stock" or the term "RISKS" refers to an option contract that returns to the investor at expiration shares of the underlying security equal in value to the difference between the value of the underlying security at expiration and the strike price of the contract. At expiration, holders of RISKS will receive nothing if the stock closes at or below the strike price of the RISKS contract. A position consisting of a long RISKS contract has a risk/reward similar to that of a long call position. A long RISKS position offers an investor all of the upside price appreciation above the strike price of the RISKS contract while limiting the investor's capital at risk to the premium paid to acquire the RISKS contract. RISKS contracts will be European style and cannot be exercised prior to expiration.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition, under proposed Rule 900DORS(a), DORS would be included within the definition of "security" or "securities" as those terms are used in the Constitution and Rules of the Exchange.

The Exchange believes that the structure of the product will enable investors to hedge or obtain exposure to discrete portions of the total return of a security. For example, an investor interested in generating more current income while eliminating stock price risk could sell both the RISKS and OWLS against a long position in XYZ stock.[4] This would enable the investor to continue to vote as a shareholder and retain the dividends paid by XYZ for the next five years with no stock price risk. In addition, the investor would receive the premium from selling the RISKS and OWLS, and could earn interest on that premium. At expiration, the investor would deliver 100 shares of XYZ to satisfy settlement of the RISKS and OWLS sold. A slightly less conservative investor could sell just a RISKS contract against the investor's long stock position so that at expiration they will only be obligated to sell some portion of their long stock holdings (stock equal in value to the difference—if any—in price of the stock and the strike price of the RISKS contract). In the interim the investor will continue to vote as a shareholder, earn the dividends paid by the stock and earn interest on the premium received from selling the RISKS contract.

b. Listing Standards

Any security eligible for listed options pursuant to Rule 915 will also be suitable for the listing of DORS. The Exchange will generally seek to list DORS contracts on securities that also trade regular listed options; however, there may be instances where securities eligible for listing and trading options do not have DORS contracts listed and vice versa.

Rule 915 specifies the criteria for underlying securities to be eligible for listed options. Generally, underlying securities in respect of which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria:

- The security must be duly registered and be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and
- The security shall be characterized by a substantial number of outstanding shares which are widely held and actively traded.

Rule 915 also provides that the Board of Directors of the Exchange shall from time to time establish guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. In addition, Rule 915 states that there are many relevant factors which must be considered in arriving at such a determination. Under Rule 915, the fact that a particular security may meet the guidelines established by the Board does not necessarily mean that it will be approved as an underlying security. Further, in exceptional circumstances an underlying security may be approved by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. With respect to DORS, as a practical matter the Exchange shall generally avoid listing DORS on securities that meet the criteria in Rule 915 but in fact do not have regular put and call options listed for trading. The Exchange believes that DORS are complementary products to regular listed put and call options and that price discovery, and hedging should be enhanced when both product types are available for trading.

The Exchange also notes that Rule 916 will apply to DORS. Rule 916 considers the circumstances in which the Exchange will contemplate the withdrawal of approval for underlying securities. Specifically, whenever the Exchange determines that an underlying security previously approved for Exchange option transactions does not meet the then current requirements for continuance of such approval or for any other reason should no longer be approved, the Exchange shall not open for trading any additional series of options of the class covering that underlying security and may thereafter prohibit any opening purchase transactions in series of options of that class previously opened, to the extent it shall deem such action necessary or appropriate; provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements, regarding number of publicly held shares or publicly held principal amount, number of shareholders, trading volume or market price the Exchange may, in the interest of maintaining a fair and orderly market or for the protection of investors, determine to continue to open additional series of option contracts of the class covering that underlying security. When all option contracts in respect of an underlying security that is no longer approved have expired, the Exchange may make application to the Securities and Exchange Commission to strike from trading and listing all such option contracts. With respect to DORS, should regular put and call options on the same underlying security cease trading for any reason other than a failure to satisfy Rule 916, DORS shall continue to be listed for trading but new series shall not be added unless the Exchange determines that in the interest of maintaining a fair and orderly market the addition of such series is warranted.

c. Rights and Obligations of Holders and Sellers of DORS

Proposed Rule 902DORS(a) would provide that, subject to the provisions of Rules 907 and 909, the rights and obligations of holders and sellers of DORS dealt in on the Exchange shall be as set forth in the By-Laws and Rules of the OCC. Rule 907 applies to the liquidation of positions and provides that, whenever the Exchange shall determine that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position (whether long or short) in all option contracts of one or more classes or series dealt in on the Exchange in excess of the applicable position limit established pursuant to Rule 904, it may direct all members and member organizations carrying a position in option contracts of such classes or series for such person or persons to liquidate such position as expeditiously as possible consistent with the maintenance of an orderly market. Whenever such a direction is issued by the Exchange, no member organization receiving notice thereof shall accept any order to purchase, sell or exercise any option contract for the account of the person or persons named in such directive, unless in each instance express approval therefore is given by the Exchange, or until such directive is rescinded.

Rule 909 addresses other restrictions on exchange traded options transactions and exercises and specifies that the Exchange shall have the power to impose, from time to time in its discretion, such restrictions on Exchange option transactions or the exercise of option contracts in one or more series of options of any class dealt in on the Exchange as it deems advisable in the interests of maintaining a fair and orderly market in option contracts or in the underlying securities covered by such option contracts, or otherwise deems advisable in the public interest or for the protection of investors. During the effectiveness of any such restriction, no member or member organization shall effect any Exchange option transaction or exercise

[4] For every 100 shares of stock held long, the investor could sell one RISKS, one OWLS, and one DIVS contract and be fully hedged.

any option contract in contravention of such restriction. Notwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, no restriction on the exercise of option contracts shall remain in effect with respect to that series of options.[5]

In addition, proposed Rule 902DORS(b) would provide that the provisions of Rule 905NY are applicable to DORS. 905NY provides generally that neither the Exchange nor its Directors, officers, committee members, employees or agents shall be liable to the ATP Holders of the Exchange or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority.

d. Role of the Options Clearing Corporation ("OCC")

The OCC has indicated a willingness to work with the Exchange to issue, clear and settle DORS. The Exchange notes that prior to trading of DORS, the OCC will need to amend its rules with respect to DORS and amend the existing Options Disclosure Document required pursuant to Rule 9b-1 under the Exchange Act[6] to incorporate disclosure about DORS.

e. Series of DORS Open for Trading

DORS will be listed with expirations of up to six years from the listing date. The Exchange intends to list five consecutive-year expiration series at any one time, with the expiration date set to coincide with regular options expiration on the third Friday of January in each expiration year. For example, as of April 1, 2012, the Exchange would expect to list and trade DORS contracts expiring on January 18, 2013, January 17, 2014, and January 16, 2015, January 15, 2016, and January 20, 2017. On the Monday following the expiration of the January 18, 2013 series, the Exchange would list the series expiring on January 19, 2018.

At the initial time of listing, the Exchange will seek to list both OWLS and RISKS with strike prices that are slightly in or out of the money. Periodically the Exchange will introduce new strikes as necessary to ensure that both OWLS and RISKS that are slightly in or out of the money will be available for trading. The listing of a new OWLS series will result in the listing of a RISKS contract with the same terms and vice versa. Standard strike price intervals will apply to series of both OWLS and RISKS.

DIVS, however, will always have one strike available for trading for a given expiration series. DIVS will always be listed with a strike price of $.01 (with no value attached) since they are intended to give investors exposure to a stream of cash flows representing the dividends paid by the underlying security during the time the investor owns the DIVS contract. For example, DIVS on XYZ stock are listed having a strike price of $.01 and an expiration date of January 16, 2017. Assume that, as April 1, 2012, XYZ is expected to continue to pay a $.20 dividend in each of the calendar quarters remaining until the DIVS contract expires on January 20, 2017. Given this information, it is reasonable to expect that the DIVS contract will be quoted in the market place at a price reflective of the net present value of the expected future dividends. In this example, assuming a discount rate of .78%,[7] those future dividends that total $3.80 would have a net present value of $3.73. Consequently, it is reasonable to expect that the market price for this DIVS contract would be centered around this value such that the bid may be $3.70 with an ask price of $3.75. An investor, having purchased the DIVS contract for $3.75, would receive periodic cash payments that will equal dividends paid by the underlying security. Therefore, each dividend declared and paid by the underlying security will result in a cash payment to the DIVS holder and, concurrent with that payment, the market value of the DIVS contract will be reduced by the amount of the dividend paid. At expiration, it is expected that the DIVS contract, having paid out cash payments over its life equal to dividends declared by the underlying security, will expire with no value. DIVS are essentially a call option on the future dividend stream of the underlying security. As such, there is no need for multiple strike prices; rather, the market will price each DIVS based on the net present value of the expected future stream of dividends.

After DORS options have been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of DORS options, the Exchange may open for trading series of options expiring in consecutive calendar years ("consecutive year series"), as provided in proposed Rule 903DORS(a)(1). Prior to the opening of trading in any series of DORS options, the Exchange shall fix the expiration day, expiration month, expiration year and strike price of DORS option contracts included in each such series. Consecutive year series will result in the various DORS components, DIVS, OWLS, and RISKS, all being listed such that no more than 5 consecutive year series exists at any one time with the most distant expiration not to exceed 6 years. Generally, DIVS, OWLS and RISKS consecutive year series shall expire on the third Friday of January. Expiration series with greater than 9 months until expiration are not subject to rules regarding strike price intervals, bid/ask differentials and continuity.

In addition, proposed Rule 903DORS(b) would provide that the provisions of Rule 903A shall apply to DORS, except as provided for in Commentary .01 to the rule. Rule 903A provides generally that the exercise price of each options series listed by the Exchange shall be fixed at a price per share which is reasonably close to the price of the underlying at or about the time the Exchange determines to list the series. Commentary .01 to proposed Rule 903DORS(b) would provide that OWLS and RISKS shall initially be listed with strike prices that are slightly out of or in the money. For example, if the underlying security is trading at $72.50, the expectation is that OWLS and RISKS would be listed with strike prices of $75. New series of OWLS and RISKS shall be listed when the underlying security price has moved such that existing series are no longer slightly out of the money. OWLS and RISKS shall always be listed in pairs—for example, the listing of an OWLS contract expiring on January 18, 2013 with a strike price of $75 shall also require that a RISKS contract with the same terms be listed. The Exchange is also proposing to adopt Commentary .02 which states that DIVS, unlike OWLS and RISKS, shall always be listed with a strike price of $.01 with no value attached. As additional strike prices for the same consecutive year series are added for OWLS and RISKS, there shall be no additional strike prices added for

[5] In addition, Rule 909 would be explicitly applied to DORS through proposed Rule 909DORS.

[6] 17 CFR 240.9b–1.

[7] Assume .78% is the current yield on five-year Treasury notes, which is a good approximation for the discount rate that would be commonly used in calculating the net present value of a future stream of cash flows.

DIVS. DIVS shall be listed for each expiration series that exists for OWLS and RISKS.

f. Symbology

DORS will be listed using a unique symbol. For example, if DORS were listed on Apple Inc., where the stock and the option symbol is AAPL, the symbol AAQ might be adopted as the symbol under which DORS on Apple Inc. are listed. OWLS, as noted earlier, have a risk/reward profile like that of a buy/write. A buy/write is also known as a synthetic short put and has the same risk/reward as a cash secured short put position. Given this risk/reward profile, the Exchange intends to represent OWLS in the systems for quoting, trading and clearance as put options. RISKS options, as noted earlier, have a risk/reward profile like that of a long call position. As such, the Exchange intends to represent RISKS options as call options in the systems used for quoting, trading and clearance.

Consistent with established industry practice, DIVS will utilize the same symbol used by the OWLS and RISKS with a "9" appended to the end. For example, if AAQ denotes the OWLS and RISKS contracts on Apple Inc. (symbol AAPL), AAQ9 will denote the DIVS on Apple Inc. stock because the DIVS contract represents a non-standard deliverable. Further DIVS, will be represented within the systems used for quoting, trading, and clearance as a call options with a strike price of $.01. The Exchange believes that adopting a unique symbol, coupled with investor education, will easily allow investors to ascertain that the DORS contracts, which settle into something other than 100 shares of stock, are different from regular, listed, equity options. The Exchange notes that there are a number of products that traded in the past and today based on the performance of a security, or securities, that settle into something other than 100 shares of stock. For example, NASDAQ PHLX, lists and trades options on the relative performance of 2 securities that settle into cash.[8] CBOE currently trades credit event binary options, which utilize a slightly different symbol. These options only pay off cash in the event of a credit event, such as a default on existing debt.[9] The Exchange has traded another type of binary option, called Fixed Return Options, based on the performance of equities and ETF. These options pay either $0 or $100 at expiration depending upon whether they finish in the money.[10] The Exchange believes that given the past and current practice of trading non-standard options utilizing different symbols, coupled with appropriate educational efforts, the proposed DORS symbol methodology will be sufficient to make investors aware that the DORS product delivers something other than 100 shares of stock at expiration.

g. Quote and Trade Reporting

The Exchange intends to list and trade the DORS components as standard options contracts. Quotes and trades will be reported over the Securities Information Processor ("SIP") known as the Options Price Reporting Authority.

h. Position Limits

The Exchange proposes to adopt a new Rule 904DORS to establish position limits for OWLS and RISKS consistent with the provisions of Rule 904, except as provided for below. Since OWLS and RISKS options are of the type known as European exercise, the Exchange believes that it is appropriate for positions in OWLS and RISKS to be segregated from positions in regular listed options on the same underlying security. For example, Rule 904, Commentary .07 specifies that if XYZ stock had traded more than 100,000,000 shares during the previous six-month trading period, it would qualify for the highest tier of position limits applicable to standard listed options, which is presently 250,000 contracts. OWLS and RISKS contracts that have XYZ stock as the underlying security in turn would have their own position limit of 250,000 contracts, separate and distinct from the 250,000-contract position limit applicable to the standard listed option. The Exchange notes that granting a separate and distinct position limit for OWLS and RISKS that is equal to the position limit for standard options on the same underlying security is warranted since OWLS and RISKS are European style and may not be exercised before expiration. This inability to exercise OWLS and RISKS before expiration means that an investor could not combine a position in OWLS and RISKS with a position in standard options on the same underlying security and attempt to manipulate the underlying security via the exercise of those options.

Long positions in both OWLS and RISKS are considered to be on the same side of the market for purposes of position limit reporting and compliance. Long RISKS contracts are essentially long calls, and long OWLS contracts are essentially synthetic short puts. Conversely, short positions in both OWLS and RISKS are also considered to be on the same side of the market for purposes of position limit reporting and compliance. For example, a position consisting of long 150,000 OWLS on XYZ and long 150,000 RISKS on XYZ would be considered to have a position of 300,000 contracts on the same side of the market, and absent any hedge exemptions as provided for in Rule 904, such position would be considered to be in violation of that Rule.

The Exchange proposes that position limits in DIVS be subject to their own separate limit, also determined in accordance with Rule 904. DIVS are call options that give investors exposure to the stream of cash flows equivalent to any dividends paid by the underlying security. As such, there is no potential to try to influence the underlying stock price by either purchasing large quantities of DIVS or exercising large quantities of DIVS since they are settled in cash and they are also European style and only exercisable at expiration. Due to their structure, at expiration DIVS will be worthless, having already paid out their value periodically over their life as the underlying stock itself goes ex-dividend. For these reasons, the Exchange believes that this aggregation of position limits for DIVS is not warranted.

The Exchange proposes to allow hedge exemptions for DORS in the case where an investor is long the same quantity of DIVS, OWLS and RISKS all expiring at the same time, and where the OWLS and RISKS having the same strike price can be fully hedged by a short position in the underlying security such that for every 100 shares of stock that are sold short against a long position consisting of 1 DIV, 1 OWL and 1 RISK. Conversely, a short position consisting of 1 DIV, 1 OWL and 1 RISK is deemed to be fully hedged by a long position consisting of 100 shares of the underlying security. Such positions, as fully hedged, are exempt from the position limits described in this Rule 904DORS.

i. Reports of Positions

The Exchange proposes to adopt a new Rule 906DORS that mirrors existing Rule 906 for Reports of Positions. Consistent with current practice, positions in DIVS, OWLS and RISKS will be subject to the 200-contract reporting requirement under Rule 906. In addition, long RISKS and OWLS would be considered to be on the same side of the market and would be aggregated for purposes of this reporting

[8] *See http://www.nasdaqtrader.com/Micro.aspx?id=alpha* for a description of NASDAQ OMX Alpha Index Options.

[9] *See http://www.cboe.com/micro/credit/AvailableCebos.aspx.*

[10] *See* Rules 900FRO to 980FRO.

requirement. DIVS would be subject to their own position limit, and accordingly, positions in DIVS would not be aggregated with RISKS or OWLS.

In computing reportable positions under Rule 906DORS, DORS on underlying individual stocks, indexes, Exchange-Traded Fund Shares and Section 107 Securities shall not be aggregated with non-DORS option contracts.

j. Exercise, Settlement and Dividend Equivalent Exchange Date

The exercise style for all DORS components will be European style, where exercise and assignment only take place at expiration. Additionally, all DORS components will be automatically exercised, to be settled in accordance with the policies and procedures of the OCC as further described below.

DIVS Settlement: Settlement of DIVS will be for cash only if there are previously declared but unpaid dividends on the underlying stock. Though all DIVS contracts will be limited to strike prices of $0.01, settlement will not require delivery (receipt) of $1 per contract assigned (exercised) because there is no value attached to the strike price; the only amount due will be potentially a cash amount equal to any dividend amount that the underlying security is "ex" on expiration Friday. As noted earlier, a DIVS contract will have paid out any of its value during the life of the contract whenever the underlying security has declared a dividend payment.

OWLS and RISKS Settlement: Settlement of OWLS and RISKS will be made via a combination of shares of the underlying security plus cash in lieu of any fractional shares of the underlying security, except that RISKS may expire worthless and convey nothing at expiration upon assignment. At expiration, holders of OWLS will receive shares of the underlying security plus cash in lieu of fractional shares equal to the lesser of the composite closing price of the stock or the strike price of the OWLS contract.

For example, at the close of trading on expiration (typically the third Friday in January), XYZ security has a composite closing price of $78.35. There are two series of expiring OWLS contracts, one having a strike price of $75 and one having a strike price of $80. The holder of the OWLS contract with a strike price of $75 would receive a combination of shares and cash in lieu of fractional shares equal to $75. With the stock closing at $78.35, this would mean the holder of the $75 strike OWLS contract would receive 95 shares of XYZ plus cash in lieu of .724313 shares or cash of $56.75. This result is arrived at by computing how many shares are needed to deliver $75 per share or $7,500 per contract in value to the long OWLS holder. By dividing $75 by the current value of the stock, one can calculate the number of shares required to settle the OWLS contract at expiration. In this example, $75 divided by $78.35 results in .95724313. This figure, when multiplied by the contract multiplier (100), results in 95 whole shares of XYZ plus fractional shares of .724313 that will be paid in cash. The holder of the OWLS contract with a strike price of $80 would receive 100 shares of XYZ equal in value to the composite closing price of the stock—in this case 100 shares at $78.35.

RISKS contracts will settle for shares of stock equal to the value—if any—between the difference of the composite closing price of the stock at expiration and the strike price of the RISKS contract. For example, at the close of trading on expiration (typically the third Friday in January), XYZ security has a composite closing price of $78.35. There are two series of expiring RISKS contracts, one having a strike price of $75 and one having a strike price of $80. The holder of the RISKS contract with a strike price of $75 would receive shares of XYZ plus cash in lieu of any fractional shares, equal in value to $3.35 (the difference between the composite close in the security and the strike price). In this case that would translate into four shares of XYZ (having a value of $313.40) plus cash in lieu of .275686 fractional shares (having a value of $21.60), resulting in a long position of cash and stock worth a total of $335. The RISKS contract with a strike price of $80 would expire worthless and the holder would receive nothing at expiration.

As noted previously, DIVS holders are entitled to receive cash payments during the time they hold the contract that are equivalent to the dividend stream on the underlying security. The transfer of payments between those with long and short positions in DIVS contracts of the same terms will occur on the Dividend Equivalent Exchange Date ("DExD"). The DExD will coincide with the "ex-dividend" date for the underlying security. The OCC will credit long DIVS with cash equal to the dividend on the "ex-dividend" date based on publicly available information from sources including, but not limited to, Bloomberg, Reuters, information circulars from listing exchanges and press releases by the underlying security's issuer. This cash will be debited from those accounts that are short DIVS contracts of the same terms. If, for example, XYZ stock goes "ex" $.50 per share, the holder of the DIVS contract on XYZ would receive $50 per DIVS contract held long in its account on the DExD, which is also the "ex-dividend" date of the underlying security XYZ. Short positions in DIVS on XYZ would be debited $50 per contract on the DExD.

The exercise, settlement, and dividend exchange date practices and procedures outlined above will be codified in new Rule 980DORS.

k. Hedging

A position consisting of a long DIVS contract, a long OWLS contract and a RISKS contract of the same strike, all expiring at the same time, will have yielded investment returns identical to those of an investor long 100 shares of the underlying stock for the same period of time. By virtue of this, hedging of DORS is fairly straightforward and the introduction of DORS should create additional arbitrage opportunities between the underlying stock, listed options on the same underlying stock and the DORS, which will be beneficial to investors in any of the related instruments due to the increased liquidity and the transparency DORS bring to the market.

l. Margin

For both RISKS and OWLS, customer purchases must be paid for in full, consistent with how purchases of option contracts are handled under present margin rules. Customers who are selling RISKS and OWLS will be subject to standard options margining. For example, the seller of an 85 strike RISKS contract on XYZ stock that expires on 1/21/17 will be expected to post margin equivalent to 100% of the current market value of the contract, reduced by any out-of-the-money amount not to be less than 20% for initial and/or for maintenance purposes, with a 10% minimum margin requirement. If XYZ were trading at $87.00 per share and the current price of the 85 RISKS contract is $16.20,[11] a Customer selling the 85 strike RISKS contract would be expected to post margin equal to $1,740 (20% of $8,700, which is the current market value of 100 shares of XYZ) because that amount is greater than the current market price of the RISKS contract ($16.20 x 100 = $1,620). A covered writer of a RISKS contract is

[11] Using a standard pricing model such as Black-Scholes, the price of the 85 strike RISKS expiring on 1/21/17 would be higher than the $2 difference between the current price of XYZ and the 85 strike price principally due to the length of time until expiration.

someone who is long 100 shares of the underlying security for each RISKS contract sold short, and such a person would not be required to post margin for that covered position.

Similarly, if the 85 strike OWLS contract on XYZ stock that expires on 1/21/17 is trading at $60.40, the seller of that OWLS contract would be required to post margin equal to 100% of the market value of the OWLS contract ($6,040, as this is greater than 20% of the current market value of the underlying security after being reduced by the out-of-the-money amount, if any (20% of $8700 is $1,740)). A covered writer of OWLS is anyone who is long 100 shares of the underlying security for each OWLS contract sold short, and such a person would not be required to post margin for that covered position.

DIVS also have an existing contract with similar risks. Specifically, the Chicago Board Options Exchange ("CBOE") lists and trades options on several indexes designed to track the dividends paid by the constituents of the index. Existing margin rules for those products require that "[p]urchases of puts or calls with 9 months or less until expiration must be paid for in full. Writers of uncovered puts or calls must deposit/maintain 100% of the option proceeds plus 15% of the aggregate contract value (current index level x $100) minus the amount by which the option is out-of-the-money, if any, subject to a minimum for calls of option proceeds plus 10% of the aggregate contract value and a minimum for puts of option proceeds plus 10% of the aggregate exercise price amount." [12] The Exchange notes that while there is no "underlying contract value," there is an underlying security associated with DIVS. Extending the margin requirements in place for the existing dividend-based product to DIVS and utilizing the value of the underlying security in lieu of the "underlying contract value" makes economic sense. Therefore, the Exchange proposes that writers of uncovered DIVS contracts be margined as follows:

Except as provided below, no DIVS contract carried for a customer shall be considered of any value for the purpose of computing the margin required in the account of such customer. The initial and maintenance margin on any DIVS contract carried long in a customer account is 100% of the purchase price of such DIVS contract. The margin required for any DIVS contract carried short in a customer account is: (a) For Initial Margin, 100% of the DIVS contract sale proceeds plus 20% of the value of 100 shares of the security underlying the DIVS for each DIVS contract carried short; and (b) for Maintenance Margin, 100% of the DIVS current market price for DIVS contracts plus a minimum of 10% of the value of 100 shares of the security underlying the DIVS for each DIVS contract carried short.

The Exchange may also require uncovered writers to post additional margin if it deems it necessary; any such increase will be disseminated via an information circular sent to all ATP Holders. A covered writer of DIVS contracts is someone who is long 100 shares of the underlying security for each DIVS contract sold short. A buyer of DIVS will be required to pay for the contract in full.

Margin on Spreads: Under the proposed rule change, no margin is required on a DIVS contract carried short in a customer account that is offset by a long DIVS contract for the same underlying security or instrument that expires after the date on which the short DIVS contract expires.

Fully Hedged Positions: Under the proposed rule change, a position consisting of a DIVS contract carried short in a customer account that expires at the same time as an OWLS contract and an RISKS contract with the same strike prices, on the same underlying security or instrument, that are also carried short in a customer account, shall be treated as fully hedged if such position is offset by a long position consisting of the appropriate number of shares of the underlying security or instrument. Such a short position shall not require any additional margin to be posted.

Cash Account Positions: Under the proposed rule change, a DIVS, OWLS, or RISKS contract carried short in a customer account would be deemed a covered position, and eligible for the cash account, as described below:

A DIVS contract carried short in a customer account is deemed a covered position, and eligible for the cash account, provided any one of the following either is held in the account at the time the contract is written or is received into it promptly thereafter: a long DIVS contract on the same underlying security or instrument that expires after the date on which the short DIVS contract expires.

An OWLS contract carried short in a customer account is deemed a covered position, and eligible for the cash account, provided any one of the following either is held in the account at the time the contract is written or is received into it promptly thereafter: a long OWLS contract on the same underlying security or instrument, having a strike price equal to or higher than the short OWLS contract, that expires on or after the date on which the short OWLS contract expires.

A RISKS contract carried short in a customer account is deemed a covered position, and eligible for the cash account, provided any one of the following either is held in the account at the time the contract is written or is received into it promptly thereafter: a long RISKS contract on the same underlying security or instrument, having a strike price equal to or lower than the short RISKS contract, that expires on or after the date on which the short RISKS contract expires.

m. Voting Rights

As with regular listed options, none of the DORS components convey any of the voting rights a shareholder of the common stock enjoys until the option contract(s) are exercised, and, where appropriate, settled into shares of the underlying security. At that time, after exercise and assignment have taken place, anyone who ends up with a long position in shares of the underlying security would be deemed to be a shareholder of record in the security, and he or she would be afforded all the rights of a shareholder at that time.

n. Surveillance

The Exchange represents that the existing surveillance systems that are in place for listed options are adequate to perform surveillance for the DORS components.

o. Systems Capacity

The Exchange represents that DORS will not place an undue burden on its systems capacity.

p. FLEX Trading

The Exchange does not initially intend to allow DORS components to trade via the FLEX trading procedures in Rules 900G to 909G. If the Exchange makes a determination to permit DORS to trade via FLEX trading procedures, it will submit a proposed rule change to the Commission to clarify the manner in which such trading will be permitted at that time.

q. Implementation Date

In addition to Commission approval, the implementation of this proposed rule change will be contingent on other factors, including the completion of any changes that may be necessary to the Exchange's regulatory and surveillance program. Accordingly, the Exchange does not intend to implement the proposed rule change immediately upon

[12] *See* CBOE Rule 12.3.

Commission approval. The Exchange intends to issue a notice announcing the implementation date of this rule change within six months after Commission approval of the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by offering three new products that allow investors to hedge their risks in ways that do not currently exist. The DORS structure will allow investors for the first time to separate the total return of a security into three distinct components of varying levels of risk to allow individuals to further refine the risk within their portfolio. An especially novel aspect is the DIVS component, which will for the first time allow investors to hedge the expected stream of dividends to be paid by a security.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–14 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–NYSEMKT–2012–14. 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 Section, 100 F Street NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. 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–NYSEMKT–2012–14 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16519 Filed 7–5–12; 8:45 am]

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[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67324; File No. SR–C2–2012–020]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

June 28, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 22, 2012, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Penny Pilot Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program is scheduled to expire on June 30, 2012. C2 proposes to extend the Pilot Program until December 31, 2012. C2 believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Penny Pilot Program, C2 proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program ("replacement class"). Any replacement class would be determined based on national average daily volume in the preceding six months,[4] and would be added on the second trading day following July 1, 2012. C2 will announce to its Permit Holders by circular any replacement classes in the Pilot Program.

C2 is specifically authorized to act jointly with the other options exchanges participating in the Penny Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 particular, the proposed rule change allows for an extension of the Penny Pilot Program for the benefit of market participants.

[4] The month immediately preceding a replacement class's addition to the Pilot Program (i.e. June) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading following July 1, 2012 be identified based on The Option Clearing Corporation's trading volume data from December 1, 2011 through May 31, 2012.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

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.

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–C2–2012–020 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–C2–2012–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–C2–2012–020 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16569 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67322; File No. SR–CBOE–2012–059]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Penny Pilot Program

June 29, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 22, 2012, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Penny Pilot Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegularotyHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 Penny Pilot Program is scheduled to expire on June 30, 2012. CBOE proposes to extend the Pilot Program until December 31, 2012. CBOE believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Penny Pilot Program, CBOE proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program ("replacement class"). Any replacement class would be determined based on national average daily volume in the preceding six months,[4] and would be added on the second trading day following July 1, 2012. CBOE will employ the same parameters to prospective replacement classes as approved and applicable in determining the existing classes in the Pilot Program, including excluding high-priced underlying securities.[5] CBOE will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Penny Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 particular, the proposed rule change allows for an extension of the Penny Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The month immediately preceding a replacement class's addition to the Pilot Program (i.e. June) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading following July 1, 2012 be identified based on The Option Clearing Corporation's trading volume data from December 1, 2011 through May 31, 2012.

[5] *See* Securities Exchange Act Release No. 60864 (October 22, 2009) (granting immediate effectiveness to SR–CBOE–2009–76).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–059 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–CBOE–2012–059. 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–CBOE–2012–059 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16568 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 5.

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67323; File No. SR–ISE–2012–57]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

June 29, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 20, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules relating to a pilot program to quote and to trade certain options in pennies ("Penny Pilot Program"). The text of the proposed rule change is as follows, with deletions in [brackets] and additions *italicized:*

Rule 710. Minimum Trading Increments

(a) The Board may establish minimum trading increments for options traded on the Exchange. Such changes by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Rule 710 within the meaning of subparagraph (3)(A) of Section 19(b) of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1) If the options contract is trading at less than $3.00 per option, $.05; and

(2) If the options contract is trading at $3.00 per option or higher, $.10.

(b) Minimum trading increments for dealings in options contracts other than those specified in paragraph (a) may be fixed by the Exchange from time to time for options contracts of a particular series.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

(c) Notwithstanding the above, the Exchange may trade in the minimum variation of the primary market in the underlying security.

Supplementary Material to Rule 710

.01 Notwithstanding any other provision of this Rule 710, the Exchange will operate a pilot program, scheduled to expire on [June 30] *December 31*, 2012, to permit options classes to be quoted and traded in increments as low as $.01. The Exchange will specify which options trade in such pilot, and in what increments, in Regulatory Information Circulars filed with the Commission pursuant to Rule 19b–4 under the Exchange Act and distributed to Members.

The Exchange may replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day following [January] *July* 1, 2012.

.02 No Change.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock ("QQQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2012.[4] The Exchange proposes to extend the time period of the Penny Pilot Program through December 31, 2012, and to provide revised dates for adding replacement issues to the Penny Pilot program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2012. The replacement issues will be selected based on trading activity for the six month period beginning December 1, 2011, and ending May 31, 2012. This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is found in Section 6(b)(5),[5] in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[12] Accordingly, the Commission designates the proposed

[4] *See* Exchange Act Release No. 65968 (December 15, 2011), 76 FR 79723 (December 22, 2011) (SR–ISE–2011–83).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

rule change as operative upon filing with the Commission.[13]

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.

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–ISE–2012–57 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–ISE–2012–57. 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–ISE–2012–57 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16546 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67328; File No. SR–BOX–2012–007]

Self-Regulatory Organizations; BOX Options Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

June 29, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 19, 2012, BOX Options Exchange, LLC (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)(iii) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7260 (Penny Pilot Program) to extend, through December 31, 2012, the pilot program that permits certain classes to be quoted in penny increments ("Penny Pilot Program"). The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://boxexchange.com*, 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the effective time period of the Penny Pilot Program that is currently scheduled to expire on June 30, 2012, for an additional six months, through December 31, 2012.[6] The Penny Pilot Program permits certain classes to be quoted in penny increments. The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQs, SPY and IWM, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQs, SPY and IWM, will continue to be quoted in $0.01 increments for all options series.

The Exchange may replace any Pilot Program classes that have been delisted on the second trading day following July 1, 2012. The replacement classes will be selected based on trading activity for the six month period beginning December 1, 2011, and ending May 31, 2012. The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] The Penny Pilot Program has been in effect on the Exchange since its inception in May 2012. *See* Securities Exchange Act Release No. 66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (File No. 10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission).

securities. The Exchange will distribute a Regulatory Circular notifying Participants which replacement classes shall be included in the Penny Pilot Program.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed extension will allow the Penny Pilot Program to remain in effect without interruption.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[13] However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[15] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[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.

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–BOX–2012–007 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–BOX–2012–007. 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–BOX–2012–007 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16542 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 6.

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67327; File No. 4–443]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures To Facilitate the Listing and Trading of Standardized Options To Add NASDAQ OMX BX, Inc. as a Sponsor

June 29, 2012.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 608 thereunder,[2] notice is hereby given that on June 27, 2012, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the Plan for the Purpose of Developing and Implementing Procedures to Facilitate the Listing and Trading of Standardized Options ("OLPP").[3] The amendment proposes to add BX as a Sponsor of the OLPP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Description and Purpose of the Amendment

The current Sponsors of the OLPP are BATS, BOX, BSE., CBOE, C2, ISE., NYSE Amex, NYSE Arca, OCC, Phlx and Nasdaq. The proposed amendment to the OLPP would add BX as a Sponsor of the OLPP. A national securities exchange may become a Sponsor if it satisfies the requirement of Section 7 of the OLPP. Specifically an Eligible Exchange[4] may become a Sponsor of the OLPP by: (i) Executing a copy of the OLPP, as then in effect; (ii) providing each current Plan Sponsor with a copy of such executed Plan; and (iii) effecting an amendment to the OLPP, as specified in Section 7(ii) of the OLPP.

Section 7(ii) of the OLPP sets forth the process by which an Eligible Exchange may effect an amendment to the OLPP. Specifically, an Eligible Exchange must: (a) execute a copy of the OLPP with the only change being the addition of the new sponsor's name in Section 8 of the OLPP;[5] and (b) submit the executed OLPP to the Commission. The OLPP then provides that such an amendment will be effective at the later of either the amendment being approved by the Commission or otherwise becoming effective pursuant to Section 11A of the Act. BX has submitted a signed copy of the OLPP to the Commission and to each Plan Sponsor in accordance with the procedures set forth in the OLPP regarding new Plan Sponsors.

II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed OLPP amendment has become effective pursuant to Rule 608(b)(3)(iii)[6] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraphs (a)(1) of Rule 608,[7] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendment 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 4–443 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 4–443. 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 BX's principal office. 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 No. 4–443 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16541 Filed 7–5–12; 8:45 am]

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC ("Amex"). Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange LLC ("ISE"), Options Clearing Corporation ("OCC"), Philadelphia Stock Exchange, Inc. ("Phlx"), and Pacific Exchange, Inc. ("PCX") (n/k/a NYSE Arca). *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, Boston Stock Exchange, Inc. ("BSE") was added as a Sponsor to OLPP. *See* Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004). On March 21, 2008, the Nasdaq Stock Market, LLC ("Nasdaq") was added as a Sponsor to the OLPP. *See* Securities Exchange Act Release No. 57546, 73 FR 16393 (March 27, 2008). On February 17, 2010, BATS Exchange, Inc. ("BATS") was added as a Sponsor to the OLPP. *See* Securities Exchange Act Release No. 61528, 75 FR 8415 (February 24, 2010). On October 22, 2010, C2 Options Exchange Incorporated ("C2") was added as a Sponsor to the OLPP. *See* Securities Exchange Act Release No. 63162, 75 FR 66401 (October 28, 2010). On May 9, 2012, BOX Options Exchange LLC ("BOX") was added as a Sponsor to the OLPP. *See* Securities Exchange Act Release No. 66952, 77 FR 28641 (May 15, 2012).

[4] The OLPP defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Exchange Act, 15 U.S.C. 78f(a), that (1) has effective rules for the trading of options contracts issued and cleared by the OCC approved in accordance with the provisions of the Exchange Act and the rules and regulations thereunder and (2) is a party to the Plan for Reporting Consolidated Options Last Sale Reports and Quotation Information (the "OPRA Plan"). BX has represented that it has met both the requirements for being considered an Eligible Exchange.

[5] The Commission notes that the list of plan sponsors is set forth in Section 9 of the OLPP.

[6] 17 CFR 242.608(b)(3)(iii).

[7] 17 CFR 242.608(a)(1).

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67326; File No. SR–Phlx–2012–86]

Self-Regulatory Organizations; NASDAQ OMX Phlx, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

June 29, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 22, 2012, NASDAQ OMX Phlx, LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1034 (Minimum Increments) to: extend through December 31, 2012, the Penny Pilot Program in options classes in certain issues ("Penny Pilot" or "Pilot"); and provide for or allow replacement of any Penny Pilot issues that have been delisted.[4]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii)[5] to the extent needed for timely industry-wide implementation of the proposal.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 amend Phlx Rule 1034 to extend the Penny Pilot through December 31, 2012, and replace any Penny Pilot issues that have been delisted.

For a pilot period scheduled to expire on June 30, 2012, the Penny Pilot allows certain options to be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00; and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust ("QQQQ")®, SPDR S&P 500 Exchange Traded Funds ("SPY"), and iShares Russell 2000 Index Funds ("IWM"), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. Currently the Exchange trades 348 options classes pursuant to the Penny Pilot.

The Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for six months through December 31, 2012.

Commensurate with the extension of the Penny Pilot through December 31, 2012, the Exchange proposes to replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot. The replacement issues will be selected based on trading activity for the six month period beginning December 1, 2011, and ending May 31, 2012. The replacement issues would be added to the Pilot on the second trading day following July 1, 2012.[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by extending the Penny Pilot and replacing delisted Penny Pilot issues.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal would allow the Penny Pilot to continue in its current format through December 31, 2012.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR–Phlx–2010–65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR–Phlx–2010–103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR–Phlx–2010–167) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011) (SR–Phlx–2011–172) (notice of filing and immediate effectiveness extending the Penny Pilot).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's Web site.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[13] However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[15] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[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.

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–Phlx–2012–86 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–Phlx–2012–86. 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–Phlx–2012–86 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16540 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67325; File No. SR–NASDAQ–2012–075]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

June 29, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 22, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market ("NOM") to amend Chapter VI, Section 5 (Minimum Increments) to: Extend through December 31, 2012, the Penny Pilot Program in options classes in certain issues ("Penny Pilot" or "Pilot"); and provide for or allow replacement of any Penny Pilot issues that have been delisted.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness

Continued

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii) [5] to the extent needed for timely industry-wide implementation of the proposal.

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. NASDAQ 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 amend Chapter VI, Section 5 to extend the Penny Pilot through December 31, 2012, and replace any Penny Pilot issues that have been delisted.

For a pilot period scheduled to expire on June 30, 2012, the Penny Pilot allows certain options to be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00; and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust ("QQQQ")®, SPDR S&P 500 Exchange Traded Funds ("SPY"), and iShares Russell 2000 Index Funds ("IWM"), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. Currently the Exchange trades 345 options classes pursuant to the Penny Pilot.

The Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for six months through December 31, 2012.

Commensurate with the extension of the Penny Pilot through December 31, 2012, the Exchange proposes to replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot. The replacement issues will be selected based on trading activity for the six month period beginning December 1, 2011, and ending May 31, 2012. The replacement issues would be added to the Pilot on the second trading day following July 1, 2012.[6]

In terms of housekeeping, the Exchange proposes to delete the phrase "on a semi-annual basis" from Section 5(a)(3) of Chapter VI to make it consistent with a similar provision of another exchange, namely Phlx Rule 1034(a)(i)(A).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by extending the Penny Pilot and replacing delisted Penny Pilot issues.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal would allow the Penny Pilot to continue in its current format through December 31, 2012.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[13] However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is

establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62617 (July 30, 2010), 75 FR 47670 (August 6, 2010) (SR–NASDAQ–2010–092) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63396 (November 30, 2010), 75 FR 76064 (December 7, 2010) (SR–NASDAQ–2010–150) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extending the Penny Pilot).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's Web site.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[15] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[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.

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–NASDAQ–2012–075 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–NASDAQ–2012–075. 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–NASDAQ–2012–075 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

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[15] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67318; File No. SR–NYSEMKT–2012–13]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Rule Change, as Modified by Amendment No. 1 Thereto, (1) Amending Rule 13—Equities To Establish New Order Types, (2) Amending Rule 115A—Equities To Delete Obsolete Text and To Clarify and Update the Description of the Allocation of Market and Limit Interest in Opening and Reopening Transactions, (3) Amending Rule 123C—Equities To Include Better-Priced G Orders in the Allocation of Orders in Closing Transactions, and (4) Making Other Technical and Conforming Changes

June 29, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 15, 2012, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Rule 13—Equities to establish new order types, (2) amend Rule 115A—Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C—Equities to include better-priced G orders in the allocation of orders in closing transactions, and (4) make other technical and conforming changes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) amend Rule 13—Equities to establish new order types, (2) amend Rule 115A—Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C—Equities to include better-priced G orders[4] in the allocation of

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A G order is a proprietary order represented pursuant to Section 11(a)(1)(G) of the Securities Exchange Act of 1934 (the "Act"). Section 11(a)(1) of the Act generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account

Continued

orders in closing transactions, and (4) make other technical and conforming changes.

Rule 13—Equities Order Type Amendments

The Exchange proposes to amend Rule 13—Equities to delete the At the Opening and At the Opening Only order types [5] and replace them with Market "On-the-Open" ("MOO") and Limit "On-the-Open" ("LOO") order types, terminologies commonly used by other exchanges [6] and variations of the Market "At-the-Close" ("MOC") and Limit "At-the-Close" ("LOC") order types already offered by the Exchange.[7] Under current Rule 13—Equities, At the Opening and At the Opening Only orders can execute after the security opens on a quote, which is why the current definition includes provisions relating to routing such interest to an away market. The Exchange wishes to preclude such interest from executing after opening on a quote, or routing to an away market, and as such, the new MOO and LOO order definitions would specifically provide that such order types automatically cancel if the security opens either on a quote or a trade.

A MOO would be defined as a market order in a security that is to be executed in its entirety on the opening or reopening trade of the security on the Exchange; it would be immediately and automatically cancelled if the security opened on a quote or if it were not executed due to tick restrictions. A LOO order would be defined as a limit order in a security that is to be executed on the opening or reopening trade of the security on the Exchange. A LOO order, or a part thereof, would immediately and automatically cancel if by its terms it were not marketable at the opening price, if it were not executed on the opening trade of the security on the Exchange, or if the security opened on a quote. Both MOO and LOO orders could be entered before the open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.

The Exchange also proposes to add a new paragraph (c) in the definition of IOC orders to provide for a new order type, an IOC-Minimum Trade Size ("MTS") order ("IOC–MTS order"), which would be defined as any IOC order, including an intermarket sweep order, that includes an MTS instruction.[8] For each incoming IOC–MTS order, Exchange systems would evaluate whether contra-side displayable and non-displayable interest on Exchange systems could meet the MTS and reject such incoming IOC–MTS order if Exchange contra-side volume could not do so. An Exchange IOC order with an MTS could result in an execution in an away market. For example, assume that the Exchange best bid or offer is $10.05–$10.07 with 500 shares offered. A buy Exchange IOC–MTS market order for 500 shares arrives, and because the Exchange can fill it, the incoming Exchange IOC–MTS order would be accepted. However, if the current best protected offer is $10.06 on another market for 200 shares, the Exchange would route 200 shares of the incoming Exchange IOC–MTS to Nasdaq and execute the balance of 300 shares at $10.07. The Exchange would reject any IOC–MTS orders if the security were not open for trading, if it were halted or paused, or if auto-execution were suspended.

The Exchange proposes non-substantive amendments to its Immediate or Cancel definition as well, including adding the short-form term "IOC" to the rule, redesignating existing paragraphs (c) and (d) as (d) and (e) respectively, and conforming existing rule text to provide that only an IOC order without an MTS could be entered before the Exchange opening for participation in the opening trade or when auto execution is suspended, which includes during a trading pause or halt.

The Exchange proposes, as a technical and conforming amendments to Rule 13—Equities, to delete the definition of Time Order because this relates to a Floor broker order that historically would have been held by the specialist on behalf of the Floor broker and converted to a market or limit order at a specified time. In connection with both the Hybrid Market initiative and the Exchange's New Market Model, this order type is now obsolete and can no longer be used by Floor brokers.

Rule 115A—Equities Opening Allocation

The Exchange proposes to amend Rule 115A—Equities, which addresses orders at the opening or in unusual situations. Currently, the Rule contains no text but has Supplementary Material .10, which addresses queries to the Display Book before an opening; Supplementary Material .20, which addresses the arranging of an opening or price by a Designated Market Maker ("DMM"); and Supplementary Material .30, which addresses certain functions of Exchange systems with respect to orders at the opening.

The Exchange proposes to redesignate Supplementary Material .10 as Rule 115A(a)—Equities but does not propose any change to the text of this provision.

The Exchange proposes to add new Rule 115A(b)—Equities, which would address the allocation of orders on opening and reopening trades and delete in its entirety the text of Supplementary Material .20 and .30. Most of the current text of Supplementary Material .20 and .30 is obsolete in that it describes DMM functions that have not been performed since the second phase of the New Market Model was launched in 2008.[9] DMMs no longer hold orders. As such, the Exchange proposes to delete all of the text relating to those functions. Supplementary Material .30 also contains text describing Exchange systems that is either outdated or covered by Rule 15—Equities, and as such, also would be deleted.

A few of the current provisions of Supplementary Material .20 continue to be applicable following adoption of the New Market Model. Current paragraphs 2(a), (b), and (c) of Supplementary Material .20 address the allocation and precedence of certain orders in openings and reopenings. Paragraph 2(a) provides that a limited price order to buy (sell)

over which it or an associated person exercises discretion. *See* 15 U.S.C. 78k(a)(1). Subsection (G) of Section 11(a)(1) provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction ("G order"). A g-Quote is an electronic method for Floor brokers to represent G orders. The Exchange proposes to amend Rule 13—Equities to define a "G order" as the term is currently used in Rule 123C(7)—Equities, and the Exchange proposes to add it to Rule 115A—Equities.

[5] Under current Rule 13—Equities, these orders are market or limited price orders that are to be executed on the opening trade of the stock on the Exchange or, if the Exchange opens the stock on a quote, the opening trade in the stock on another market center to which such order or part thereof has been routed in compliance with Regulation NMS; any such order or portion thereof not so executed is treated as cancelled. An At the Opening or At the Opening Only order that seeks the possibility of an Exchange-only opening execution must be marked as a Regulation NMS-compliant Immediate or Cancel ("IOC") order. An order so marked, or part thereof, is immediately and automatically cancelled if it is not executed on the opening trade of the stock on the Exchange or compliance with Regulation NMS requires all or part of such order to be routed to another market center.

[6] *See, e.g.*, NYSE Arca Equities Rule 7.31(t)(1) and (2); NASDAQ Rule 4752(a)(3) and (4); and BATS Exchange Rule 11.23(a)(14) and (16).

[7] *See* Rule 13—Equities.

[8] A minimum trade size instruction is currently available to Floor brokers for d-quotes under NYSE Rule 70.25(d)—Equities. Nasdaq also offers a Minimum Quantity Order, which is a non-displayed order that will not execute unless a specified minimum quantity of shares can be obtained.

[9] *See* Securities Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10).

that is at a higher (lower) price than the security is to be opened or reopened is treated as a market order, and market orders have precedence over limited orders. Paragraph 2(b) provides that when the price on a limited price order is the same as the price at which the stock is to be opened or reopened, it may not be possible to execute a limited price order at such price. Paragraph 2(c) requires a DMM to see that each market order the DMM holds participates in the opening transaction, and if the order is for an amount larger than one round lot, the size of the bid that is accepted or the offer that is taken establishing the opening or reopening price is the amount that a market order is entitled to participate in at the opening or reopening.

The Exchange proposes to move these concepts concerning the allocation and precedence of orders in openings and reopenings to proposed Rule 115A(b)—Equities; further clarify and update the text to better reflect the Exchange's current practices; and expressly address the treatment of MOOs, LOOs, tick-sensitive market orders, Floor broker interest manually entered by DMMs, and G orders. Proposed Rule 115A(b)—Equities would provide that when arranging an opening or reopening price, except as provided for in proposed Rule 115A(b)(2)—Equities, which is described below, market interest would be guaranteed to participate in the opening or reopening transaction and have precedence over (i) limit interest that is priced equal to the opening or reopening price of a security and (ii) DMM interest. For purposes of the opening or reopening transaction, market interest would include (i) market and MOO orders, (ii) tick-sensitive market and MOO orders to buy (sell) that are priced higher (lower) than the opening or reopening price, (iii) limit interest to buy (sell) that is priced higher (lower) than the opening or reopening price, and (iv) Floor broker interest entered manually by the DMM.

For purposes of the opening or reopening transaction, limit interest would include (i) limited-priced interest, including e-Quotes, LOO orders, and G orders; and (ii) tick-sensitive market and MOO orders that are priced equal to the opening or reopening price of a security. Limit interest that is priced equal to the opening or reopening price of a security and DMM interest would not be guaranteed to participate in the opening or reopening transaction. In addition, G orders that are priced equal to the opening or reopening price of a security would yield to all other limit interest priced equal to the opening or reopening price of a security except DMM interest.

The Exchange also proposes to include in the rule more specificity of the circumstances of when a security may open on a quote, and what would happen to odd-lot sized orders in such scenario. Proposed Rule 115A(b)(2)—Equities would provide that if the aggregate quantity of MOO and market orders on at least one side of the market equals one round lot or more, the security must open on a trade. If the aggregate quantity of MOO and market orders on each side of the market equals less than one round lot or is zero, the security could open on a quote. If a security opens on a quote, odd-lot market orders would automatically execute in a trade immediately following the open on a quote and odd-lot MOOs would immediately and automatically cancel. MOO and market orders subject to tick restrictions that either cannot participate at an opening or reopening price or are priced equal to the opening or reopening price would not be included in the aggregate quantity of MOO and market orders.

Rule 123C—Equities Closing Allocation

The Exchange proposes to amend Rule 123C—Equities to include better-priced G orders in the list of orders that must be allocated in whole or part in closing transactions. G orders on the Exchange yield priority and parity to other non-G orders, other than CO Orders.[10] However, Section 11(a)(1)(G) of the Act does not require better-priced G orders to yield.

Currently, Rule 123C(7)(a)—Equities sets forth six order types that must be included in the closing transaction in the following order: (1) MOC orders that do not have tick restrictions, (2) MOC orders that have tick restrictions that limit the execution of the MOC to a price better than the price of the closing transaction, (3) Floor broker interest entered manually by the DMM, (4) limit orders better priced than the closing price, (5) LOC orders that do not have tick restrictions better priced than the closing transaction, and (6) LOC orders better priced than the closing transaction that have tick restrictions that are capable of being executed based on the closing price. Rule 123C(7)(b)—Equities provides that the following interest may be used to offset a closing imbalance in the following order: (1) Limit orders represented in the Display Book with a price equal to the closing price, (2) LOC orders with a price equal to the closing price, (3) MOC orders that have tick restrictions that limit the execution of the MOC to the price of the closing transaction, (4) LOC orders that have tick restrictions that are capable of being executed based on the closing price and the price of such limit order is equal to the price of the closing transaction, (5) G orders, and (6) Closing Only orders.

The Exchange proposes to amend Rule 123C(7)(a)—Equities to add G orders that are better priced than the closing price as the last type of order that must be included in the closing transaction and to make a conforming change to Rule 123C(7)(b)—Equities to reference G orders priced equal to the closing price as being eligible to be used to offset a closing imbalance with the same priority as the current Rule reflects. Rule 123C(7)(b)(i)—Equities also would be clarified by adding that DMM interest, as well as limit orders represented in the Display Book with a price equal to the closing price, are the first types of interest that may be used to offset a closing imbalance.[11]

The Exchange notes that in amending Rules 115A—Equities and 123C—Equities to include better-priced G orders in the allocation of orders in opening, reopening, and closing transactions, G orders priced at the opening, reopening, or closing price will still yield priority and parity to other non-G orders, other than CO Orders at the close, as required by Section 11(a) of the Act. The Exchange further notes that there is no requirement under the Act that better-priced G orders yield. The Exchange believes that including better-priced G orders in the required allocation for opening, reopening, and closing transactions will encourage member organizations to provide price improvement and liquidity on the Exchange. Moreover, for opening and reopening transactions, if better-priced G orders are not included in the "has to go" interest, immediately following the opening, such better-priced G orders will automatically be quoted, which, assuming it is sell G order interest, could result in an opening transaction, and then a sell quote that is below the opening price.

[10] *See supra* note 4.

[11] The New York Stock Exchange LLC, upon which rules the Exchange equities rules are based, has noted in prior rule filings that DMM interest would be treated in such a manner. *See, e.g.*, Securities Exchange Act Release No. 60974 (Nov. 9, 2009) 74 FR 59299 (Nov. 17, 2009) (SR–NYSE–2009–111) ("After the 'must execute interest' is satisfied, then any limit orders represented in Display Book at the closing price may be used to offset the remaining imbalance. It should be noted that DMM interest, including better-priced DMM interest entered into the Display Book prior to the closing transaction, eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction.").

Because these are technology-based changes, the Exchange will announce the implementation schedule via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that deleting the At the Opening and At the Opening Only order types and creating new MOO and LOO order types provide more clarity about how opening orders are processed, and in particular that automatically canceling such orders when the Exchange opens on quote will create efficiencies and also remove impediments to a free and open market. The Exchange further believes that offering a new order type, an IOC–MTS, will offer investors new trading opportunities on the Exchange. The LOO, MOO, and IOC–MTS orders are similar to orders that have already been approved by the Commission.[14]

The Exchange believes that amending Rule 115A—Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in openings and reopenings and address the treatment of additional order types will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed changes to Rule 123C—Equities and related proposed change concerning the treatment of better-priced G orders in Rule 115A—Equities will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system, and that the proposed changes also are consistent with Section 11(a)(1)(G) of the Act. As discussed above, G Orders priced at the opening, reopening, or closing price will continue to yield, as required by Section 11(a). Moreover, the Exchange believes that for the opening and reopening transactions, including better-priced G interest as "has-to-go" interest will encourage member organizations to provide price improvement and liquidity at the Exchange. The Exchange further believes that amending Rule 123C(7)(b)(i)—Equities to expressly provide for the treatment of DMM interest in offsetting a closing imbalance will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, the technical changes to remove obsolete references in Rule 13—Equities also will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–13 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–NYSEMKT–2012–13. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2012–13 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16522 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* notes 6 and 8.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67317; File No. SR–NYSE–2012–19]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Rule Change, as Modified by Amendment No. 1 Thereto, (1) Amending Rule 13 To Establish New Order Types, (2) Amending Rule 115A To Delete Obsolete Text and To Clarify and Update the Description of The Allocation of Market and Limit Interest in Opening and Reopening Transactions, (3) Amending Rule 123C To Include Better-Priced G Orders in The Allocation of Orders in Closing Transactions, and (4) Making Other Technical and Conforming Changes

June 29, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 15, 2012, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 27, 2012, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Rule 13 to establish new order types, (2) amend Rule 115A to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C to include better-priced G orders in the allocation of orders in closing transactions, and (4) make other technical and conforming changes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) amend Rule 13 to establish new order types, (2) amend Rule 115A to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C to include better-priced G orders [4] in the allocation of orders in closing transactions, and (4) make other technical and conforming changes.

Rule 13 Order Type Amendments

The Exchange proposes to amend Rule 13 to delete the At the Opening and At the Opening Only order types [5] and replace them with Market "On-the-Open" ("MOO") and Limit "On-the-Open" ("LOO") order types, terminologies commonly used by other exchanges [6] and variations of the Market "At-The-Close" ("MOC") and Limit "At-The-Close" ("LOC") order types already offered by the Exchange.[7] Under current Rule 13, At the Opening and At the Opening Only orders can execute after the security opens on a quote, which is why the current definition includes provisions relating to routing such interest to an away market. The Exchange wishes to preclude such interest from executing after opening on a quote, or routing to an away market, and as such, the new MOO and LOO order definitions would specifically provide that such order types automatically cancel if the security opens either on a quote or a trade.

A MOO would be defined as a market order in a security that is to be executed in its entirety on the opening or reopening trade of the security on the Exchange; it would be immediately and automatically cancelled if the security opened on a quote or if it were not executed due to tick restrictions. A LOO order would be defined as a limit order in a security that is to be executed on the opening or reopening trade of the security on the Exchange. A LOO order, or a part thereof, would immediately and automatically cancel if by its terms it were not marketable at the opening price, if it were not executed on the opening trade of the security on the Exchange, or if the security opened on a quote. Both MOO and LOO orders could be entered before the open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.

The Exchange also proposes to add a new paragraph (c) in the definition of IOC orders to provide for a new order type, an IOC–Minimum Trade Size ("MTS") order ("IOC–MTS order"), which would be defined as any IOC order, including an intermarket sweep order, that includes an MTS instruction.[8] For each incoming IOC–MTS order, Exchange systems would evaluate whether contra-side displayable and non-displayable interest on Exchange systems could meet the MTS and reject such incoming IOC–MTS order if Exchange contra-side volume could not do so. An NYSE IOC order with an MTS could result in an execution in an away market. For example, assume that the Exchange best bid or offer is $10.05–$10.07 with 500 shares offered. A buy NYSE IOC–MTS market order for 500 shares arrives, and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A G order is a proprietary order represented pursuant to Section 11(a)(1)(G) of the Securities Exchange Act of 1934 (the "Act"). Section 11(a)(1) of the Act generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. *See* 15 U.S.C. 78k(a)(1). Subsection (G) of Section 11(a)(1) provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction ("G order"). A g-Quote is an electronic method for Floor brokers to represent G orders. The Exchange proposes to amend Rule 13 to define a "G order" as the term is currently used in Rule 123C(7), and the Exchange proposes to add it to Rule 115A.

[5] Under current Rule 13, these orders are market or limited price orders that are to be executed on the opening trade of the stock on the Exchange or, if the Exchange opens the stock on a quote, the opening trade in the stock on another market center to which such order or part thereof has been routed in compliance with Regulation NMS; any such order or portion thereof not so executed is treated as cancelled. An At the Opening or At the Opening Only order that seeks the possibility of an NYSE-only opening execution must be marked as a Regulation NMS-compliant Immediate or Cancel ("IOC") order. An order so marked, or part thereof, is immediately and automatically cancelled if it is not executed on the opening trade of the stock on the Exchange or compliance with Regulation NMS requires all or part of such order to be routed to another market center.

[6] *See, e.g.*, NYSE Arca Equities Rule 7.31(t)(1) and (2); NASDAQ Rule 4752(a)(3) and (4); and BATS Exchange Rule 11.23(a)(14) and (16).

[7] *See* Rule 13.

[8] A minimum trade size instruction is currently available to Floor brokers for d-quotes under NYSE Rule 70.25(d). Nasdaq also offers a Minimum Quantity Order, which is a non-displayed order that will not execute unless a specified minimum quantity of shares can be obtained.

because NYSE can fill it, the incoming NYSE IOC–MTS order would be accepted. However, if the current best protected offer is $10.06 on another market for 200 shares, NYSE would route 200 shares of the incoming NYSE IOC–MTS to Nasdaq and execute the balance of 300 shares at $10.07. The Exchange would reject any IOC–MTS orders if the security were not open for trading, if it were halted or paused, or if auto-execution were suspended.

The Exchange proposes non-substantive amendments to its Immediate or Cancel definition as well, including adding the short-form term "IOC" to the rule, redesignating existing paragraphs (c) and (d) as (d) and (e) respectively, and conforming existing rule text to provide that only an IOC order without an MTS could be entered before the Exchange opening for participation in the opening trade or when auto execution is suspended, which includes during a trading pause or halt. Existing paragraph (e) would be deleted because it contains obsolete text.[9]

The Exchange proposes additional technical and conforming amendments to Rule 13. The Exchange proposes to delete the definition of Auction Market Order [10] because this order type was never implemented. The Exchange also proposes to delete the definition of Time Order because this relates to a Floor broker order that historically would have been held by the specialist on behalf of the Floor broker and converted to a market or limit order at a specified time. In connection with both the Hybrid Market initiative and the Exchange's New Market Model, this order type is now obsolete and can no longer be used by Floor brokers. In addition, the Exchange proposes to amend the definition of Auto Ex Order to remove a reference to the Automated Bond System, which is no longer operational.

Rule 115A Opening Allocation

The Exchange proposes to amend Rule 115A, which addresses orders at the opening or in unusual situations. Currently, the Rule contains no text but has Supplementary Material .10, which addresses queries to the Display Book before an opening; Supplementary Material .20, which addresses the arranging of an opening or price by a Designated Market Maker ("DMM"); and Supplementary Material .30, which addresses certain functions of Exchange systems with respect to orders at the opening.

The Exchange proposes to redesignate Supplementary Material .10 as Rule 115A(a) but does not propose any change to the text of this provision.

The Exchange proposes to add new Rule 115A(b), which would address the allocation of orders on opening and reopening trades and delete in its entirety the text of Supplementary Material .20 and .30. Most of the current text of Supplementary Material .20 and .30 is obsolete in that it describes DMM functions that have not been performed since the second phase of the New Market Model was launched in 2008.[11] DMMs no longer hold orders. As such, the Exchange proposes to delete all of the text relating to those functions. Supplementary Material .30 also contains text describing Exchange systems that is either outdated or covered by Rule 15, and as such, also would be deleted.

A few of the current provisions of Supplementary Material .20 continue to be applicable following adoption of the New Market Model. Current paragraphs 2(a), (b), and (c) of Supplementary Material .20 address the allocation and precedence of certain orders in openings and reopenings. Paragraph 2(a) provides that a limited price order to buy (sell) that is at a higher (lower) price than the security is to be opened or reopened is treated as a market order, and market orders have precedence over limited orders. Paragraph 2(b) provides that when the price on a limited price order is the same as the price at which the stock is to be opened or reopened, it may not be possible to execute a limited price order at such price. Paragraph 2(c) requires a DMM to see that each market order the DMM holds participates in the opening transaction, and if the order is for an amount larger than one round lot, the size of the bid that is accepted or the offer that is taken establishing the opening or reopening price is the amount that a market order is entitled to participate in at the opening or reopening.

The Exchange proposes to move these concepts concerning the allocation and precedence of orders in openings and reopenings to proposed Rule 115A(b); further clarify and update the text to better reflect the Exchange's current practices; and expressly address the treatment of MOOs, LOOs, tick-sensitive market orders, Floor broker interest manually entered by DMMs, and G orders. Proposed Rule 115A(b) would provide that when arranging an opening or reopening price, except as provided for in proposed Rule 115A(b)(2), which is described below, market interest would be guaranteed to participate in the opening or reopening transaction and have precedence over (i) limit interest that is priced equal to the opening or reopening price of a security and (ii) DMM interest. For purposes of the opening or reopening transaction, market interest would include (i) market and MOO orders, (ii) tick-sensitive market and MOO orders to buy (sell) that are priced higher (lower) than the opening or reopening price, (iii) limit interest to buy (sell) that is priced higher (lower) than the opening or reopening price, and (iv) Floor broker interest entered manually by the DMM.

For purposes of the opening or reopening transaction, limit interest would include (i) limited-priced interest, including e-Quotes, LOO orders, and G orders; and (ii) tick-sensitive market and MOO orders that are priced equal to the opening or reopening price of a security. Limit interest that is priced equal to the opening or reopening price of a security and DMM interest would not be guaranteed to participate in the opening or reopening transaction. In addition, G orders that are priced equal to the opening or reopening price of a security would yield to all other limit interest priced equal to the opening or reopening price of a security except DMM interest.

The Exchange also proposes to include in the rule more specificity of the circumstances of when a security may open on a quote, and what would happen to odd-lot sized orders in such scenario. Proposed Rule 115A(b)(2) would provide that if the aggregate quantity of MOO and market orders on at least one side of the market equals one round lot or more, the security must open on a trade. If the aggregate quantity of MOO and market orders on each side of the market equals less than one round lot or is zero, the security could open on a quote. If a security opens on a quote, odd-lot market orders would automatically execute in a trade immediately following the open on a quote and odd-lot MOOs would immediately and automatically cancel. MOO and market orders subject to tick restrictions that either cannot participate at an opening or reopening price or are priced equal to the opening or reopening price would not be included in the aggregate quantity of MOO and market orders.

[9] Paragraph (e) references commitments to trade received on the Floor through the Intermarket Trading System ("ITS"). ITS was decommissioned in connection with the implementation of Regulation NMS on July 9, 2007.

[10] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05).

[11] *See* Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR–NYSE–2008–46).

Rule 123C Closing Allocation

The Exchange proposes to amend Rule 123C to include better-priced G orders in the list of orders that must be allocated in whole or part in closing transactions. G orders on NYSE yield priority and parity to other non-G orders, other than CO Orders.[12] However, Section 11(a)(1)(G) of the Act does not require better-priced G orders to yield.

Currently, Rule 123C(7)(a) sets forth six order types that must be included in the closing transaction in the following order: (1) MOC orders that do not have tick restrictions, (2) MOC orders that have tick restrictions that limit the execution of the MOC to a price better than the price of the closing transaction, (3) Floor broker interest entered manually by the DMM, (4) limit orders better priced than the closing price, (5) LOC orders that do not have tick restrictions better priced than the closing transaction, and (6) LOC orders better priced than the closing transaction that have tick restrictions that are capable of being executed based on the closing price. Rule 123C(7)(b) provides that the following interest may be used to offset a closing imbalance in the following order: (1) Limit orders represented in the Display Book with a price equal to the closing price, (2) LOC orders with a price equal to the closing price, (3) MOC orders that have tick restrictions that limit the execution of the MOC to the price of the closing transaction, (4) LOC orders that have tick restrictions that are capable of being executed based on the closing price and the price of such limit order is equal to the price of the closing transaction, (5) G orders, and (6) Closing Only orders.

The Exchange proposes to amend Rule 123C(7)(a) to add G orders that are better priced than the closing price as the last type of order that must be included in the closing transaction and to make a conforming change to Rule 123C(7)(b) to reference G orders priced equal to the closing price as being eligible to be used to offset a closing imbalance with the same priority as the current Rule reflects. Rule 123C(7)(b)(i) also would be clarified by adding that DMM interest, as well as limit orders represented in the Display Book with a price equal to the closing price, are the first types of interest that may be used to offset a closing imbalance.[13]

The Exchange notes that in amending Rules 115A and 123C to include better-priced G orders in the allocation of orders in opening, reopening, and closing transactions, G orders priced at the opening, reopening, or closing price will still yield priority and parity to other non-G orders, other than CO Orders at the close, as required by Section 11(a) of the Act. The Exchange further notes that there is no requirement under the Act that better-priced G orders yield. The Exchange believes that including better-priced G orders in the required allocation for opening, reopening, and closing transactions will encourage member organizations to provide price improvement and liquidity on the Exchange. Moreover, for opening and reopening transactions, if better-priced G orders are not included in the "has to go" interest, immediately following the opening, such better-priced G orders will automatically be quoted, which, assuming it is sell G order interest, could result in an opening transaction, and then a sell quote that is below the opening price.

Because these are technology-based changes, the Exchange will announce the implementation schedule via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that deleting the At the Opening and At the Opening Only order types and creating new MOO and LOO order types provide more clarity about how opening orders are processed, and in particular that automatically canceling such orders when the Exchange opens on quote will create efficiencies and also remove impediments to a free and open market. The Exchange further believes that offering a new order type, an IOC–MTS, will offer investors new trading opportunities on the Exchange. The LOO, MOO, and IOC–MTS orders are similar to orders that have already been approved by the Commission.[16]

The Exchange believes that amending Rule 115A to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in openings and reopenings and address the treatment of additional order types will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed changes to Rule 123C and related proposed change concerning the treatment of better-priced G orders in Rule 115A will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system, and that the proposed changes also are consistent with Section 11(a)(1)(G) of the Act. As discussed above, G Orders priced at the opening, reopening, or closing price will continue to yield, as required by Section 11(a). Moreover, the Exchange believes that for the opening and reopening transactions, including better-priced G interest as "has-to-go" interest will encourage member organizations to provide price improvement and liquidity at the Exchange. The Exchange further believes that amending Rule 123C(7)(b)(i) to expressly provide for the treatment of DMM interest in offsetting a closing imbalance will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, the technical changes to remove obsolete references in Rule 13 also will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

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 that is not

[12] *See supra* note 4.

[13] The Exchange has noted in prior rule filings that DMM interest would be treated in such a manner. *See, e.g.*, Securities Exchange Act Release No. 60974 (Nov. 9, 2009) 74 FR 59299 (Nov. 17, 2009) (SR–NYSE–2009–111) ("After the 'must execute interest' is satisfied, then any limit orders represented in Display Book at the closing price may be used to offset the remaining imbalance. It should be noted that DMM interest, including better-priced DMM interest entered into the Display Book prior to the closing transaction, eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction.").

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra* notes 6 and 8.

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–19 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- NYSE–2012–19. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2012–19 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16521 Filed 7–5–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67316; File No. SR–ISE–2012–59]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees for Certain Complex Orders Executed on the Exchange

June 29, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend fees for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity in the Complex Order Book ("maker/taker fees and rebates") in a number of options classes (the "Select Symbols").[3]

For complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a "taker" fee of: (i) $0.34 per contract for ISE Market Maker,[4] Market Maker Plus,[5] Firm

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. *See* ISE Rule 100(a)(25).

[5] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting

Proprietary and Customer (Professional)[6] orders; and (ii) $0.38 per contract for Non-ISE Market Maker[7] orders. Priority Customer[8] orders in the Select Symbols (excluding SPY) are not charged a "taker" fee for trading in the Complex Order Book and receive a base rebate of $0.32 per contract (and may receive a rebate of up to $0.345 per contract if certain volume thresholds are met) when those orders trade with non-Priority Customer orders in the Complex Order Book.

For complex orders in SPY, the Exchange currently charges a "taker" fee of: (i) $0.35 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.39 per contract for Non-ISE Market Maker orders. Priority Customer[9] orders in SPY are not charged a "taker" fee for trading in the Complex Order Book and receive a base rebate of $0.33 per contract (and may receive a rebate of up to $0.355 per contract if certain volume thresholds are met) when those orders trade with non-Priority Customer orders in the Complex Order Book.

For complex orders in Select Symbols (including SPY), the Exchange currently charges a "maker" fee of: (i) $0.10 per contract for ISE Market Maker, Firm Proprietary and Customer (Professional) orders; and (ii) $0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a "maker" fee for complex orders in the Select Symbols (including SPY).

Further, pursuant to Securities and Exchange Commission ("SEC") approval, the Exchange allows Market Makers to enter quotations for complex order strategies in the Complex Order Book.[10] Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange has adopted distinct "maker" fees for complex orders in a select group of symbols when these orders interact with Priority Customer orders ("Complex Quoting Symbols).[11] Specifically, the Exchange currently charges a "maker" fee of $0.32 per contract for XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ and WFC ($0.30 per contract for XOP) for Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) complex orders when these orders trade against Priority Customer orders. Priority Customer orders are not charged a "maker" fee for complex orders in the Complex Quoting Symbols.

Further, for Priority Customer complex orders in XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ and WFC, all of which are Select Symbols, the Exchange currently provides a base rebate of $0.32 per contract (and may receive a rebate of up to $0.345 per contract if certain volume thresholds are met) when those orders trade with non-Priority Customer orders in the Complex Order Book. For Priority Customer complex orders in XOP, which is not a Select Symbols, the Exchange currently provides a base rebate of $0.28 per contract (and may receive a rebate of up to $0.325 per contract if certain volume thresholds are met) when those orders trade with non-Priority Customer orders in the Complex Order Book.

Further, the Exchange provides ISE Market Makers with a two cent discount when trading against orders that are preferenced to them. This discount is applicable when ISE Market Makers add or remove liquidity in the Complex Quoting Symbols from the Complex Order Book. Specifically, ISE Market Makers that add liquidity in XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ and WFC from the Complex Order Book by trading with Priority Customer orders that are preferenced to them are charged $0.30 per contract ($0.28 per contract in XOP). ISE Market Makers that remove liquidity in XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ and WFC from the Complex Order Book by trading with Priority Customer orders that are preferenced to them are charged $0.32 per contract ($0.33 per contract in XOP).

The Exchange now proposes to extend the fees for complex orders in the Complex Quoting Symbols to the following additional two symbols: GLD and VXX.[12] The Exchange proposes to expand the pricing structure and fees applicable to these orders in a manner that is gradual and measured. For that reason, the Exchange has previously selected symbols that have moderate trading activity and each of the Complex Quoting Symbols have an average daily trading volume in complex orders of 500 contracts to 10,000 contracts on the Exchange. The Exchange notes that GLD and VXX also meet this threshold and for that reason, the Exchange has decided to expand Complex Quoting Symbols to include these two additional symbols.

With this proposed rule change, the Exchange will charge a "maker" fee of $0.32 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) complex orders when these orders trade against Priority Customer orders. The Exchange does not propose any change to fees for Priority Customer orders in GLD and VXX that trade in the Complex Order Book. Additionally, Priority Customer complex orders in GLD and VXX will receive a base rebate of $0.32 per contract (and may receive a rebate of up to $0.345 per contract if certain volume thresholds are met) when these orders trade with non-Priority Customer orders in the Complex Order Book. Finally, ISE Market Makers that add or remove liquidity in GLD and VXX in the Complex Order Book will be charged $0.30 per contract when trading with orders that are preferenced to them.

Finally, as noted above, the Exchange provides ISE Market Makers with a two cent discount when trading against orders that are preferenced to them. The Exchange believes this discount is better represented if the Exchange notes that ISE Market Makers receive a discount of $0.02 per contract when trading against Priority Customer orders preferenced to them in the Complex Order Book instead of noting the actual discounted fee. The Exchange believes it will be easier for market participants to track the discount with the proposed new language in light of the fee changes the Exchange undertakes each month in response to competitive pricing changes

statistics during that month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so qualifies a Market Maker for the rebate. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[6] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

[8] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[9] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[10] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR–ISE–2011–39).

[11] The Complex Quoting Symbols are XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ, WFC and XOP. *See* Securities Exchange Act Release Nos. 65958 (December 15, 2011), 76 FR 79236 (December 21, 2011) (SR–ISE–2011–81); and 66406 (February 12, 2012), 77 FR 10579 (February 22, 2012) (SR–ISE–2012–07). The Exchange notes that XLB, EFA, AA, ABX, MSFT, MU, NVDA, VZ, WFC are currently Select Symbols while XOP is not.

[12] The Exchange notes that GLD and VXX are currently Select Symbols.

in the marketplace. Thus, the Exchange proposes to amend the text of each footnote that reflects the discounted fee by replacing the actual fee amount with language that notes that ISE Market Makers will receive a two cent discount when trading against orders that are preferenced to them.

The Exchange has designated this proposal to be operative on July 2, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) of the Act [14] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Complex Quoting Symbols in the Complex Order Book.

The Exchange believes that extending the fees applicable to orders executed in the Complex Order Book when trading against Priority Customers in the Complex Quoting Symbols is appropriate given the new functionality that allows Market Makers to quote in the Complex Order Book. Additionally, the Exchange's fees remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. Specifically, the Exchange believes that its proposal to assess a 'make' fee of $0.32 per contract for GLD and VXX when orders in these symbols interact with Priority Customers is reasonable and equitable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the 'make' fee for a broker/dealer complex order in GLD when trading against a Priority Customer at NASDAQ OMX PHLX ("PHLX") is $0.20 per contract [15] while the same order that is electronically delivered at the Chicago Board Options Exchange ("CBOE") is $0.45 per contract.[16] Furthermore, one of the primary goals of this fee change is to maintain the attractive and competitive economics for Priority Customer complex orders, while introducing an enhancement to the way complex orders trade on the Exchange.

The Exchange also believes that it is reasonable and equitable to provide a two cent discount to ISE Market Makers on preferenced orders because this will provide an incentive for Market Makers to quote in the Complex Order Book. The Exchange believes that it is reasonable and equitable to continue to provide rebates for Priority Customer complex orders because paying a rebate will continue to attract additional order flow to the Exchange and thereby create liquidity that ultimately will benefit all market participants who trade on the Exchange. The Exchange believes it is reasonable and equitable to amend the text of the footnotes regarding the two cent discount provided to ISE Market Makers in the Exchange's Schedule of Fees because doing so will reflect the discounted rate more accurately in light of the number of fee changes the Exchange undertakes in response to competitive pricing changes made by its competitors. The Exchange believes Exchange Members will benefit from clear guidance in the rule text describing the level of the discount the Exchange provides. The Exchange further believes the proposed rule change is reasonable because amending the relevant footnotes will provide clarity and greater transparency regarding the Exchange's fees and rebates. The Exchange notes that the proposed rule change is also equitably allocated and not unfairly discriminatory in that it treats similarly situated market participants in the same manner.

The Exchange believes that it is reasonable and equitable to charge the fees proposed herein as they are already applicable to complex orders in the Complex Quoting Symbols; with this proposed rule change, the Exchange is simply extending its current fees to an additional two symbols. The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the Complex Quoting Symbols traded on the Exchange. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[17] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange 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 Exchange 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

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] *See* PHLX Fee Schedule, Section I, Part B., at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf*.

[16] *See* CBOE Fees Schedule, Section 1.VI. at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–59 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–ISE–2012–59. 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–ISE–2012–59 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16520 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67314; File No. SR–NYSEAmex– 2012–23]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Amending NYSE Amex Options Rule 928NY Specifying That the Potential Range for the Settings Applicable to the Market Maker Risk Limitation Mechanism Will Be Between One and 100 Executions Per Second, To Eliminate the Current Reference to the Default Setting and, in the Future, To Specify the Applicable Minimum, Maximum and Default Settings via Regulatory Bulletin

June 29, 2012.

I. Introduction

On April 12, 2012, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (i) Specify the potential range for the settings applicable to the Market Maker Risk Limitation Mechanism ("Mechanism") will be between one and 100 executions per second; (ii) eliminate the current reference to the default setting; and (iii) specify that the Exchange may set the applicable minimum, maximum, and default settings via Regulatory Bulletin. The proposed rule change was published for comment in the **Federal Register** on May 1, 2012.[3] The Commission received no comment letters on the proposal. On June 26, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.

The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Exchange adopted the Mechanism as a way to protect Market Makers from the risk associated with an excessive number of nearly simultaneous executions in a single option class.[4] It functions as follows: If "n" executions occur within one second against the Market Maker's quotes in an appointed class, the NYSE Amex System automatically cancels all quotes posted by the Market Maker in that class. The Mechanism currently defaults the "n" number of executions to 50 executions per second.[5] However, a Market Maker may instead set the "n" number of executions between five and 100 executions per second.[6]

The Exchange now proposes to decrease the low end of this range from five to one, while the high end of the range would remain unchanged at 100 executions per second. The Exchange also proposes to eliminate the reference to the default setting that is applicable to the Mechanism. In addition, the Exchange proposes that, in the future, it will specify the applicable minimum, maximum and default settings for the Mechanism via Regulatory Bulletin, all of which would be within the proposed range of one to 100 executions per second.[7]

The Exchange has noted that it anticipates announcing via Regulatory Bulletin that the applicable minimum, maximum and default settings for the Mechanism will be decreased to 2, 50, and 5 executions per second, respectively.[8]

In addition, on June 26, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change, which added additional information about the Regulatory Bulletin that the Exchange would provide to Market Makers in the event the Exchange makes any changes to the Mechanism's minimum, maximum, or default settings. The Exchange specified that, when announcing changes to the Mechanism via Regulatory Bulletin, the Exchange will issue the bulletin at least one trading day in advance of the effective date of the change. The Exchange also specified that such bulletins will include: (1) Information regarding the changes to the risk settings in the Mechanism; (2) the effective date of the changes; and (3) contact information of Exchange staff who can provide additional information.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66857 (April 25, 2012), 77 FR 25770 ("Notice").

[4] *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR–NYSEALTR–2008–14).

[5] *See* NYSE Amex Options Rule 928NY(b)(1).

[6] *See* NYSE Amex Options Rule 928NY(b)(2).

[7] *See* proposed NYSE Amex Options Rule 928NY(b)(1). The Exchange proposes to designate NYSE Amex Options Rule 928NY(b)(2) as "reserved."

[8] *See* Notice, *supra* note 3, at 25771.

III. Discussion

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

The Exchange noted its belief that decreasing the minimum settings in the Mechanism would provide Market Makers with greater control and flexibility with respect to managing their risk and the manner in which they enter quotes on the Exchange. The Exchange also notes that the proposed rule change allowing the Exchange to modify Mechanism settings by Regulatory Bulletin is consistent with the Act because it would permit the Exchange to increase or decrease the Mechanism settings to accommodate system capacity concerns. The Exchange has also represented that it believes providing at least one day of advance notice via Regulatory Bulletin prior to making adjustments to the Mechanism would afford Market Makers sufficient time to review their settings and make any necessary operational or technological changes to accommodate such adjustments. Finally, the Commission notes that the proposal would not relieve Market Makers of their quoting obligations on the Exchange under the Exchange's rules.[11] For these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2012–23 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–NYSEAmex–2012–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex-2012–23 and should be submitted on or before July 27, 2012.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

As discussed above, Amendment No. 1 revised the proposed rule change to specify that, when announcing changes to the Mechanism via Regulatory Bulletin, the Exchange will issue the bulletin at least one trading day in advance of the effective date of the change. The Exchange also specified that such bulletins will include: (1) Information regarding the changes to the risk settings in the Mechanism; (2) the effective date of the changes; and (3) contact information of Exchange staff who can provide additional information. The Exchange also stated its belief that providing at least one day of advance notice prior to making adjustments would afford Market Makers sufficient time to review their settings and make any necessary operational or technological changes to accommodate such adjustments to their own settings in the Mechanism or to their own proprietary systems. The Commission believes that the amendment addresses potential concerns about when the Exchange would provide notice of changes to the Mechanism settings, the form of such notice, and whether such notice would afford Market Makers sufficient time to adjust their settings in the Mechanism or their proprietary systems. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEAmex–2012–23), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16518 Filed 7–5–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* NYSE Amex Options Rule 925NY.

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7946]

Bureau of Political-Military Affairs; Statutory Debarment of Pratt & Whitney Canada Corporation Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State, acting pursuant to section 127.7(c) of the International Traffic in Arms Regulations ("ITAR") (22 CFR Parts 120–130), imposed a

statutory debarment on Pratt & Whitney Canada Corporation ("P&W Canada") as a result of its conviction for violating section 38 of the Arms Export Control Act, as amended, ("AECA") (22 U.S.C. 2778).

DATES: *Effective Date:* June 28, 2012.

FOR FURTHER INFORMATION CONTACT: Lisa Aguirre, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632–2798.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. The statute permits limited exceptions to be made on a case-by-case basis. In implementing this provision, Section 127.7 of the ITAR provides for "statutory debarment" of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. Export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements of Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following person is statutorily debarred: Pratt & Whitney Canada Corporation, 1000 boul. Marie-Victorin Longueuil, Quebec, Canada J4G 1A1 (and all other Pratt & Whitney Canada Corporation locations); U.S. District Court, District of Connecticut; Case No. 3:12CR146(WWE).

As noted above, at the end of the three-year period following the date of this notice, the above named entity remains debarred unless export privileges are reinstated. Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit therefrom or have a direct or indirect interest therein.

Notwithstanding the information above, based on overriding national security and foreign policy concerns and after a thorough review of the circumstances surrounding the conviction and a finding that the appropriate steps have been taken to mitigate law enforcement concerns, the Assistant Secretary for Political-Military Affairs has determined to approve specific carve-outs from the statutory debarment of P&W Canada for the following categories of authorization requests:

1. Support of U.S. Government programs;
2. Support of coalition Operation Enduring Freedom; and
3. Support of government programs for NATO and Major Non-NATO Ally countries.

All requests for authorizations, or use of exemptions, involving P&W Canada that fall within the scope of the specific carve-outs will be reviewed and action taken by the Directorate of Defense Trade Controls in the ordinary course of business. All requests for authorizations involving P&W Canada that do not fall within the scope of the carve-outs must be accompanied by a specific transaction exception request. Any use of an exemption involving P&W Canada that does not fall within the scope of the carve-outs must be preceded by the approval of a transaction exception request by the Department prior to the use of the exemption. The decision to grant a transaction exception will be made on a case-by-case basis after a full review of all circumstances.

This notice is provided for purposes of making the public aware that the person identified above is prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR that do not fall within the carve-outs to the debarment. Specific criminal case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Dated: June 26, 2012.

Andrew J. Shapiro,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2012–16578 Filed 7–5–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0062]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 4, 2012.

ADDRESSES: You may submit comments identified by DOT Docket ID 2012–0062 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Chris Allen, 202–366–4104, Office of Highway Policy Information, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, between 6:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal Highway Administration (FHWA) State Reports for American Recovery and Reinvestment Act (Recovery Act).

Background: The American Recovery and Reinvestment Act of 2009 (Recovery Act), provides the State Departments of Transportation and Federal Lands Agencies with $27.5 billion for highway infrastructure investment. With these funds also comes an increased level of data reporting with the stated goal of improving transparency and accountability at all levels of government. According to President Obama *"Every American will be able to hold Washington accountable for these decisions by going online to see how and where their tax dollars are being spent."* The Federal Highway Administration (FHWA) in concert with the Office of the Secretary of Transportation (OST) and the other modes within the U.S. Department of Transportation (DOT) will be taking the appropriate steps to ensure that accountability and transparency are provided for all infrastructure investments.

The reporting requirements of the Recovery Act are covered in Sections 1201 and 1512. Section 1201 (c)(1) stipulates that "notwithstanding any other provision of law each grant recipient shall submit to the covered agency (FHWA) from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency (FHWA) and transmitted to Congress. Covered agencies (FHWA) may develop such reports on behalf of grant recipients (States) to ensure the accuracy and consistency of such reports."

Section 1512 of the Recovery Act requires "any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual," including States, to provide regular "Recipient Reports."

As the recipients or grantees for the majority of the Recovery Act funds, States and Federal Land Management Agencies (FLMA) are by statute responsible for reporting to FHWA on the projects, use of Recovery Act funds, and jobs supported. States and FLMA that receive recovery fund apportionments directly from the Federal government are responsible for reporting to FHWA, and are also responsible for reporting quarterly to the federalreporting.gov Web site. To achieve a high-quality, consistent basis for reporting and project oversight, FHWA has designed the Recovery Act Database System (RADS) for obtaining and summarizing data including reports to congress, project oversight, and other purposes.

States and FLMA will be responsible for providing the data that are not currently available at the national level. Not every data element required to be reported by the Recovery Act needs to be specifically collected. To the maximum extent possible, FHWA will utilize existing data programs to meet the Recovery Act reporting requirements. For example, for the requirement to report aggregate expenditures of State funds, FHWA will use existing reports submitted by States and data collected in the Financial Management Information System (FMIS). While the reporting obligations in the Recovery Act are only applicable to the grant recipients, the States and FLMA may need to obtain certain information from their contractors, consultants, and other funding recipients in order to provide the FHWA with all of the required information. Additional information on the American Recovery and Reinvestment Act of 2009 is available at *http://www.fhwa.dot.gov/economicrecovery/index.htm.*

Respondents: In a reporting cycle, it is estimated that reports will be received from approximately 70 grant recipients. Respondents include: 50 State Departments of Transportation, the District of Columbia and Puerto Rico, the U.S. territories, the following Federal Land Management Agencies: National Park Service, U.S. Fish and Wildlife, National Forest Service and the Bureau of Indian Affairs, and several Native American Indian Governments who, by contract, manage their own transportation program. These reports will be submitted through the RADS and reviewed for accuracy by the FHWA Division Offices.

Estimated Average Burden per Response: 5 hours.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 4000 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of computer technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: June 22, 2012.

Steven Smith,

Chief, Information Technology Division.

[FR Doc. 2012–15923 Filed 7–5–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Dockets No. FMCSA–2008–0078, FMCSA–2011–0376, FMCSA–2011–0084, FMCSA–2009–0010]

Applications for Exemption: Commercial Driver's License (CDL) and Hours-of-Service (HOS) of Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final dispositions.

SUMMARY: FMCSA announces denials of several separate applications for exemption from certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) submitted by five motor carriers on behalf of their commercial motor vehicle (CMV) drivers. The Agency reviewed each application and any public comments received, and rendered each decision based upon the merits of the application.

DATES: FMCSA denied the application for exemption of Rotel North American Tours, Inc. (Rotel) on May 21, 2012, and of Underwater Construction Corporation (Underwater) on May 29, 2012. On June 4, 2012, FMCSA denied the applications for exemption of Western Pilot Service (Western), Redding Air Service, Inc. (Redding) and Guardian Helicopters, Inc. (Guardian).

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; Telephone 202–366–4325, Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Dockets

You may read background documents or comments filed to the dockets of any of these applications for exemption by going to *www.regulations.gov* at any time, or to Room W12–140, DOT Building, 1200 New Jersey Ave. SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant an exemption from certain Federal Motor Carrier Safety Regulations (FMCSRs) for a maximum 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." This standard must be satisfied before the Agency can grant an exemption [49 CFR 381.305(a)]. If granted, the exemption may be renewed. An applicant is advised in the regulations to carefully review the FMCSRs to determine if there are any practical alternatives that would allow it to conduct its motor carrier operations without the exemption [49 CFR 381.305(b)]. The application must include a written assessment of the safety impacts the exemption may have. It must also describe how the applicant would ensure that it could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation [49 CFR 381.310(c)(4) and (5)].

FMCSA must publish a notice of each exemption application in the **Federal Register** [49 CFR 381.315(a)]. The Agency must invite the public to comment on the merits of the application, and provide the public an opportunity to inspect the application, the safety assessment, and all other information relevant to the application. The Agency must publish a notice announcing its decision on the applications. A notice is required for granting an exemption but the Agency may issue denial letters with the publication of a notice at a later date, as is the case with the denials announced today.

Applications for Exemption

Rotel, Underwater, Western, Guardian and Redding filed applications for exemption from certain FMCSRs on behalf of their CMV drivers. Guardian and Redding, under common ownership, filed jointly. FMCSA published **Federal Register** notices requesting public comment on each application. Each notice established a docket to provide the public an opportunity to inspect the application and other docketed information, such as the comments of others submitted to the docket. Table 1 provides, for each application, the docket number where the complete record can be examined, and the FMCSR from which exemption was sought.

TABLE 1

Applicant	Docket No.	Exemption sought
Rotel	FMCSA–2008–0078	CMV drivers must possess a commercial driver's license. 49 CFR part 383
Underwater	FMCSA–2011–0376	CMV drivers must maintain a record of duty status. 49 CFR 395.8
Western Pilot	FMCSA–2011–0084	CMV drivers may not drive a CMV after accumulating 70 hours of "on duty" time in an 8-day period. 49 CFR 395.3(b)(2)
Guardian and Redding (joint application)	FMCSA–2009–0010.	

Rotel

Rotel provides motorcoach tours of the United States for residents of Germany, and, for business reasons, prefers to employ residents of Germany to drive the motorcoaches. It sought renewal of an exemption from the commercial driver's license (CDL) requirements for 22 of its drivers who do not hold a CDL issued by one of the States, as required by 49 CFR part 383. On May 21, 2012, FMCSA denied Rotel's application for exemption renewal because it found that the applicant had not pursued all practical alternatives available to it, including hiring U.S. CDL drivers. A copy of the denial letter has been placed in the docket identified in Table 1.

Underwater

Underwater sought exemption for 165 of its CMV drivers from a provision of the hours-of-service (HOS) rules (49 CFR part 395) requiring CMV drivers to maintain a record of duty status (RODS) on board the CMV they are operating (49 CFR 395.8). However, operators of "utility service vehicles" (USVs) are exempt from all the HOS rules [49 CFR 395.1(n)], including the RODS requirement. Underwater stated that its drivers operate USVs for all but a portion of their overall driving time in a given week. The rest of their driving involves operation of CMVs that do not qualify as USVs; at these times, the Underwater drivers must maintain a RODS on board the CMV. Underwater sought exemption from the RODS requirement of 49 CFR 395.8 for its drivers at all times, so that they would always be exempt from the RODS requirement, even when not operating a USV. On May 29, 2012, FMCSA denied Underwater's application for exemption because Underwater failed to demonstrate how it would achieve the level of safety equivalent to, or greater than, the level of safety that would be obtained by complying with the RODS

requirement. A copy of the denial letter has been placed in the docket identified in Table 1.

Western Pilot Service

Western sought exemption for 15 CMV drivers who transport aviation fuel for aircraft engaged in firefighting operations in remote areas. Western asked for exemption from the provision of the HOS rule that limits CMV drivers to a maximum of 70 on-duty hours in any period of 8 consecutive days [49 CFR 395.3(b)(2)]. When the 70-hour limit is reached, this provision bars CMV drivers from operating a CMV on a public highway until they attain the amount of off-duty time prescribed by the HOS regulations. Western proposed that it be given an exemption that would permit its CMV drivers to satisfy the off-duty requirement by being off duty for 2 consecutive days in any 14-day period. Thus, Western drivers could be eligible to drive a CMV when their hours on duty exceeded 70 hours in the most recent 8-day period. Western sought this exemption so that the work schedules of its CMV drivers would more closely correspond with the work schedules of its aircraft pilots. FMCSA reviewed the application and the two public comments submitted. On June 4, 2012, FMCSA concluded that Western had not demonstrated how it would achieve a level of safety equivalent to or greater than the level of safety that would be obtained by complying with the limit of 70 on-duty hours in 8 days. A copy of the denial letter has been placed in the docket identified in Table 1.

Redding Air Service/Guardian Helicopters

These two entities, owned by the same individual, filed a joint application seeking relief for 20 CMV drivers who transport jet fuel in tank CMVs in support of aircraft engaged in firefighting operations. The applicants asked for exemption from the HOS rule that prohibits a driver from operating a CMV after accumulating 70 on-duty hours in an 8-day period [§ 395.3(b)(2)]. The applicant sought the exemption so that the work schedules of its ground support employees would more closely correspond to the work schedules of its aircraft employees. On June 4, 2012, the Agency concluded that the applicant failed to explain how it would ensure that drivers operating tank vehicles laden with hazardous materials beyond the 70-hour/8-day limit of section 395.3(b)(2) would achieve a level of safety equivalent to, or greater than, the level that would be achieved by compliance with that limitation. Section 381.305(a) requires that the Agency be satisfied that this standard would be met before granting an exemption from the FMCSRs. A copy of the denial letter has been placed in the docket identified in Table 1.

Conclusion

FMCSA reviewed each application and all public comments received. The Agency concluded in each case that the application for exemption lacked sufficient merit to justify the exemption sought. Accordingly, FMCSA denied the applications for exemption of Rotel, Underwater, Western, Redding and Guardian.

Issued on: June 27, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–16549 Filed 7–5–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Adoption of the Environmental Impact Statement (EIS) and Participation in the Section 106 Programmatic Agreement for the East Side Access Project

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

ACTION: Notice of adoption and recirculation of the Final Environmental Impact Statement for the East Side Access Project and participation in the Section 106 Programmatic Agreement.

SUMMARY: FRA is issuing this notice to advise the public and interested agencies that FRA is adopting the Federal Transit Administration (FTA) March 2001 Final Environmental Impact Statement and subsequent FTA reevaluations (collectively, the "2001 EIS") for the East Side Access project proposed by the Metropolitan Transportation Authority (MTA) in the State of New York. FRA is adopting the 2001 EIS to satisfy FRA's National Environmental Policy Act (NEPA) obligations related to MTA's request for financing for the East Side Access project through the FRA Railroad Rehabilitation and Improvement Financing (RRIF) Program. Through Amendment No. 3, FRA is becoming a signatory to the 2006 Amended Programmatic Agreement to satisfy Section 106 of the National Historic Preservation Act.

FOR FURTHER INFORMATION CONTACT: Michelle W. Fishburne; Environmental Protection Specialist; Federal Railroad Administration; Office of Railroad and Policy Development; 1200 New Jersey Avenue SE., MS–20; Washington, DC 20590; Phone (202) 493–0398.

DATES: Submit comments regarding adoption of the 2001 EIS no later than 30 days following EPA's notice of availability of the 2001 EIS to Michelle Fishburne, at the address listed above.

ADDRESSES: The 2001 EIS can be inspected at the FRA office at the address listed above and locally at the following locations:

Manhattan

- Community Board 4, Muhlenberg Library, 209 West 23rd Street, New York, NY 10011–2379; Phone (212) 924–1585.
- Community Board 5, Mid-Manhattan Library, 455 Fifth Avenue, New York, NY 10016–0122; Phone (212) 340–0863.
- New York Public Library, Fifth Avenue at 42nd Street, New York, NY 10018–2788; Phone (212) 275–6975.
- Community Board 6, Epiphany Library, 228 East 23rd Street, New York, NY 10010–4672; Phone (212) 679–2645.

Queens

- Community Board 8, Yorkville Library, 222 East 79th Street, New York, NY 10021–1295; Phone (212) 744–5824.
- Community Board 2, Court Square Library, 25–01 Jackson Avenue, Long Island City, NY 11101; Phone (718) 937–2790.
- Community Board 5, Maspeth Library, 69–70 Grand Avenue, Masbeth, NY 11378; Phone (718) 639–5228.

The 2001 EIS is also located on the FRA Web site at *www.fra.dot.gov* or on the MTA East Side Access project Web site at *www.mta.info/capconstr/esas/*.

SUPPLEMENTARY INFORMATION: MTA has applied to FRA for a RRIF loan for the East Side Access project. The East Side Access project will provide direct access for Long Island Rail Road (LIRR) riders to Grand Central Terminal (GCT) by connecting to the MTA LIRR Main Line and Port Washington tracks. LIRR provides service to 124 stations on 11 branch lines, within five counties in New York State: New York County, Kings County, Nassau County, Suffolk County, and Queens County. The East Side Access will be the LIRR's largest system expansion in over 100 years. The East Side Access project will open a second Manhattan gateway, greatly expanding its LIRR service by connecting Queens and Long Island with East Midtown Manhattan. With direct LIRR service to Midtown East, LIRR will further increase its market share by saving up to 40 minutes per

day in subway/bus/sidewalk travel time for commuters who work on Manhattan's East Side.

The East Side Access project includes construction of new tunnel connections beneath Sunnyside Yard and approximately three miles of new tunnel in Manhattan. The project's multiple tunnels total approximately 7.5 miles of new tunnels with approximately 13 miles of tracks. The project also involves the construction of numerous new structures, including new tracks, platforms, new off-street entrances, a new LIRR passenger station, ventilation and substation facilities, and new storage and maintenance facilities.

Analysis of environmental effects from the East Side Access project began in 1995 with the preparation of a Major Investment Study (MIS) by MTA. The MIS evaluated the effectiveness of a wide range of alternative investments and strategies for the Long Island Transportation Corridor. FTA circulated a Draft EIS in May 2000, and published notices of the 2000 Draft EIS availability with the public hearing date in the **Federal Register** on May 26, 2000. MTA held the public hearing on June 15, 2000, and public comments were accepted through December 1, 2000. FTA received over 300 public comments, which FTA addressed in the 2001 Final Environmental Impact Statement (FEIS). FTA published the Record of Decision (ROD) in May 2001.

The FEIS evaluated the environmental impacts for the No Action Alternative, the Transportation Systems Management Alternative, and the Preferred Alternative described in the MIS. Because the East Side Access project has the potential to affect a diverse set of stakeholders, MTA developed and implemented a comprehensive Communications and Coordination Plan during the development of the project. FRA was not a cooperating agency because it had no involvement with the project at that time.

Subsequent to the release of the FEIS and ROD, MTA proposed several design changes to the project. In each instance, MTA prepared a technical memorandum identifying the need for design revisions and any resulting potential environmental impacts. FTA then reviewed and analyzed these MTA memoranda to determine if any additional NEPA review was required. FTA analyzed the proposed design changes in FTA memoranda and issued a letter to MTA finding in each case that the proposed design changes would not result in additional significant impacts not already analyzed in the FEIS, that the NEPA requirements as outlined in 23 CFR 771.130 were met, and that no supplemental environmental review was required. The following table documents the technical memoranda and decision dates by FTA.

MTA technical memoranda	FTA reevaluation
1. Technical Memorandum Assessing Potential Design Changes, February 26, 2002	Aug. 30, 2002.
2. Design Changes in Queens Revision 14–4M Environmental Analysis, November 2005	Apr. 13, 2006.
3. Technical Memorandum Assessing Design Refinement: Tail Tracks Ventilation Plenum and Grate, February 2008	July 18, 2008.
4. Technical Memorandum Assessing Design Changes: LIRR Concourse and Street Entrances, July 30, 2009	Mar. 3, 2010.
5. Redundant Elevator for East Side Access Concourse, March 12, 2010	Aug. 2, 2010.
6. 48th Street Entrance Design, October 6, 2011	Nov. 23, 2011.

Additionally, due to proposed modifications to the design of the project near East 50th Street, FTA prepared the "MTA Long Island Rail Road East Side Access 50th Street Facility Revised Supplemental Environmental Assessment to the East Side Access Final Environmental Impact Statement" (2006 EA) in April 2006, and issued the Finding of No Significant Impact in July 2006.

The Council on Environmental Quality (CEQ) regulations implementing NEPA strongly encourage agencies to reduce paperwork and duplication, 40 CFR 1500.4. One of the methods identified by CEQ to accomplish this goal is adopting the environmental documents prepared by other agencies in appropriate circumstances, 40 CFR 1500.4(n), 1500.5(h), and 1506.3. In instances where the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement, 40 CFR 1506.3(b).

FRA has conducted an independent review of the FEIS, the six MTA technical memoranda with the subsequent FTA reevaluations, and the 2006 EA for the purpose of determining whether FRA could adopt FTA's environmental review pursuant to 40 CFR 1506.3 and FRA's NEPA implementing procedures, Procedures for Considering Environmental Impacts, 64 FR 28545, May 26, 1999. First, FRA's review concluded that the action encompassed by the MTA RRIF application is substantially the same as the action documented in the 2001 EIS. The RRIF loan application encompasses elements of the East Side Access project covered by the 2001 EIS. Because specific elements for FRA financing have not been determined, FRA is adopting the 2001 EIS in its entirety to facilitate funding of multiple RRIF eligible elements of the project. Second, the 2001 EIS and subsequent analyses adequately assess the environmental impacts associated with the project. Although the original FEIS is over 10 years old,[1] there have been no changes to the project that would result in significant environmental impacts that were not evaluated in the FEIS. There is no new information or circumstance that would result in significant environmental impacts not already evaluated in the FEIS, as demonstrated by FTA's reevaluations of modifications to the project since the issuance of the FEIS. Therefore, because FTA's environmental review covers the same project and adequately analyzes the impacts of the currently proposed project, FRA has determined that no supplemental EIS or reevaluation under FRA's implementing procedures is required. Third, the 2001 EIS meets the standards of the CEQ regulations, 40 CFR Parts 1500–1508. Therefore, FRA can adopt the 2001 EIS.

In addition to NEPA compliance, the 2001 FEIS incorporated the analyses required for compliance with additional environmental statutes, including Section 176(c) of the Clean Air Act (CAA), 42 U.S.C. 7506; the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*; and Section 4(f) of the Department of Transportation Act of 1966 (Section 4(f)), 49 U.S.C. 303. With respect to the CAA, FTA projects must comply with the Transportation Conformity regulations, 40 CFR part 51 Subpart T and Part 93 Subpart A, and the 2001 EIS contains the requisite analysis. However, FRA projects must comply with the General Conformity regulations in accordance with 40 CFR 93.154. Generally, if a project meets

[1] See CEQ's Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 23 March 1981, number 32, which suggests a hard look at EISs older than five years.

Transportation Conformity, it will also satisfy General Conformity. FRA reviewed the analysis in the 2001 EIS and confirmed with MTA that the project remains within the current State Transportation Plan, which, on January 3, 2012, received Federal approval for its conformity with the State Implementation Plan. The East Side Access project has been in continuous progress, is not considered a new action requiring redeterminations, and satisfies General Conformity requirements in accordance with 40 CFR part 51, Subpart W, and Part 93, Subpart B.

FRA finds that the undertaking under Section 106 of the National Historic Preservation Act is substantially the same as the undertaking addressed by FTA. FTA, MTA, and the New York State Historic Preservation Officer (NYSHPO) developed and executed a Programmatic Agreement to address potential effects on historic properties. Because of new project elements and modifications, the Programmatic Agreement was amended in June 2006 to update the Areas of Potential Effect to reflect additional archaeological and historic resources not covered in the FEIS. FRA seeks to join the June 2006 Amended Programmatic Agreement (2006 Amended PA) as a signatory for the project in its entirety. FRA will become a signatory through the execution of Amendment No. 3 to the 2006 Amended PA. By becoming a signatory, FRA will be able to require MTA to comply with the 2006 Amended PA, as a condition of an FRA RRIF loan, and monitor future design decisions regarding historic resources, should FRA decide to approve a loan.

Additionally, in the 2001 EIS, FTA evaluated the use of the historic resources and made a determination pursuant to Section 4(f), 49 U.S.C. 303. Section 4(f) requires that projects undertaken by DOT must avoid using parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent alternative, and the action includes all possible planning to minimize harm to the Section 4(f) resource. FTA implemented measures to avoid and minimize harm to the historic resources during project development and design phases of the East Side Access project. In addition, the 2006 Amended PA includes additional measures to minimize harm to these resources. FRA is not aware of any adverse effects to historic resources since the construction of the East Side Access project began in 2001. FRA anticipates that FTA's Section 106 process following the 2006 Amended PA will continue the avoidance of adverse effects from the undertaking to historic resources identified in Exhibits A, B, and C of the 2006 Amended PA.

In accordance with the Environmental Protection Agency's (EPA) requirements regarding the filing of EISs, FRA has provided EPA with electronic copies of FTA's 2001 EIS. EPA will publish a notice of availability of the 2001 EIS in the **Federal Register** consistent with its usual practices. Because of the multivolume size of the FEIS and its continued availability in libraries in the affected community and on the MTA's and FRA's Web sites, FRA is not republishing the document on its own. This would be costly, defeat CEQ's goals of reducing paperwork and duplication of effort, and be of little or no additional value to other agencies or the public. The review period for the adoption of the 2001 EIS shall extend for 30 calendar days following publication of the EPA notice of availability.

The final stage in the environmental review process under NEPA is the issuance of a ROD describing the agency's decision and the basis for it. Under the timelines included in the CEQ regulation, 40 CFR 1506.10, a ROD cannot be issued by an agency earlier than thirty days after EPA publishes its **Federal Register** notice notifying the public of the availability of the final EIS. Any ROD issued by FRA will be consistent with 40 CFR 1505.2 and section 15 of FRA's Procedures for Considering Environmental Impacts.

Accordingly, FRA is adopting and recirculating the 2001 FEIS, seeking to join the 2006 Amended PA, and has concluded that no supplemental or additional environmental review is required to support FRA's proposed action.

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

Paul Nissenbaum,

Associate Administrator, Office of Railroad Policy & Development.

[FR Doc. 2012–16669 Filed 7–5–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012–0076]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SATISFACTION; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 6, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0076. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SATISFACTION is:

Intended Commercial Use of Vessel: "Sightseeing, whale watching, snorkeling, and cruising Maui, Hawaii and Leeward waters."

Geographic Region: "Hawaii."

The complete application is given in DOT docket MARAD–2012–0076 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver

application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 26, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–16418 Filed 7–5–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 32 (Sub-No. 105X)]

Boston and Maine Corporation—Abandonment Exemption—in Worcester County, MA

Boston and Maine Corporation (B&M) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 0.14 mile freight rail operating easement for a line of railroad known as the Heywood Branch, between mileposts 27.29 and 27.43, in Gardner, Worcester County, Mass.[1] The line traverses United States Postal Service Zip Code 01440.

B&M has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 7, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 16, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 26, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to B&M's representative: Robert B. Burns, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

B&M has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by July 13, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by July 6, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: July 2, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–16577 Filed 7–5–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1098X; Docket No. AB 355 (Sub No. 41X)]

Pan Am Southern, LLC.—Abandonment Exemption—in Worcester County, MA; Springfield Terminal Railway Company—Discontinuance of Service Exemption—in Worcester County, MA

Pan Am Southern, LLC (PAS) and Springfield Terminal Railway Company (ST) (collectively, applicants) jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuance of Service* for PAS to abandon, and for ST to discontinue service over, approximately 0.31 miles of rail line known as the Heywood Branch, extending from milepost 26.98 to milepost 27.29 in Gardner, Mass. The line traverses United States Postal Service Zip Code 01440.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period; and (4) the

[1] On June 20, 2012, the Board received a clarification indicating that B&M does not own the subject line, but holds a freight rail operating easement over the line. B&M explains that it sold the right-of-way to New England Power Company in 1963 subject to B&M's retaining an easement to continue to perform the freight rail operations over the line.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on August 7, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 16, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 26, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Robert B. Burns, Corporate Counsel, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) July 13, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–83339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PAS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PAS's filing of a notice of consummation by July 6, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: July 2, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–16573 Filed 7–5–12; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Fiscal Service

Proposed Collection of Information: ACH Vendor/Miscellaneous Payment Enrollment Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the SF 3881 "ACH Vendor/Miscellaneous Payment Enrollment Form."

DATES: Written comments should be received on or before September 4, 2012.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Walt Henderson, EFT Strategy Division, Room 337, 401—14th Street SW., Washington, DC 20227, (202) 874– 6624.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: ACH Vendor/Miscellaneous Payment Enrollment Form.

OMB Number: 1510–0056.

Form Number: SF 3881.

Abstract: This form is used to collect payment data from vendors doing business with the Federal Government. The Treasury Department, Financial Management Service, will use the information to electronically transmit payment to vendors' financial institutions.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 70,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 17,500.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: June 27, 2012.

Sheryl R. Morrow,

Assistant Commissioner, Payment Management.

[FR Doc. 2012–16408 Filed 7–5–12; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 52
Approval, Disapproval and Promulgation of Implementation Plans; State of Nebraska; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology Determination; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2012–0158; FRL–9689–2]

Approval, Disapproval and Promulgation of Implementation Plans; State of Nebraska; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a partial approval and partial disapproval of a revision to the State Implementation Plan (SIP) for Nebraska, submitted by the State of Nebraska through the Nebraska Department of Environmental Quality (NDEQ) on July 13, 2011, that is intended to address regional haze for the first implementation period. This revision is intended to address the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I Areas (national parks and wilderness areas) caused by emissions of air pollutants located over a wide geographic area (also known as the "regional haze" program). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is also promulgating a Federal Implementation Plan (FIP) relying on the Transport Rule to satisfy BART for sulfur dioxide (SO_2) at one source to address deficiencies in the State's plan.

DATES: *Effective Date:* This rule will become effective August 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R07–OAR–2012–0158. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The regional office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Jay, Section Chief, Atmospheric Programs Section, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; by telephone at (913) 551–7460; or by email at *jay.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: For purposes of this document, we are giving meaning to certain words or initials as follows:

a. The word Act or initials CAA mean or refer to the Clean Air Act.
b. The initials BART mean or refer to Best Available Retrofit Technology.
c. The initials CAIR mean or refer to the Clean Air Interstate Rule.
d. The initials CENRAP mean or refer to the Central Regional Air Planning Association.
e. The initials CSAPR mean or refer to Cross-State Air Pollution Rule. The name "Cross-State Air Pollution Rule" and the name "Transport Rule" are used interchangeably and refer to the same program.[1]
f. The initials EGUs mean or refer to Electric Generating Units.
g. The words we, us or our or the initials EPA mean or refer to the United States Environmental Protection Agency.
h. The initials DSI mean or refer to Dry Sorbent Injection.
i. The initials FGD mean or refer to Flue Gas Desulfurization. This technology may also be referred to as a "scrubber".
j. The initials FIP mean or refer to Federal Implementation Plan.
k. The initials FLMs mean or refer to Federal Land Managers.
l. The initials GGS mean or refer to Gerald Gentleman Station, operated by Nebraska Public Power District.
m. The initials IMPROVE mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.
n. The initials LNB mean or refer to low NO_X burners.
o. The initials LTS mean or refer to Long-Term Strategy.
p. The initials NAAQS mean or refer to National Ambient Air Quality Standards.
q. The initials NCS mean or refer to Nebraska City Station, operated by Omaha Public Power District.
r. The words Nebraska and State mean the State of Nebraska unless the context indicates otherwise.
s. The initials NDEQ mean or refer to the Nebraska Department of Environmental Quality.
t. The initials NO_X mean or refer to nitrogen oxides.
u. The initials NPCA mean or refer to National Parks Conservation Association.
v. The initials NPPD mean or refer to Nebraska Public Power District.
w. The initials NPS mean or refer to National Park Service.
x. The initials OFA mean or refer to overfire air.
y. The initials OPPD mean or refer to Omaha Public Power District.
z. The initials PM mean or refer to particulate matter.
aa. The initials PSAT mean or refer to Particulate Source Apportionment Technology.
bb. The initials RAVI mean or refer to Reasonably Attributable Visibility Impairment.
cc. The initials RHR mean or refer to the Regional Haze Rule.
dd. The initials RPG mean or refer to Reasonable Progress Goal.
ee. The initials RPO mean or refer to Regional Planning Organizations, such as CENRAP or WRAP.
ff. The initials SCR mean or refer to selective catalytic reduction.
gg. The initials SIP mean or refer to State Implementation Plan.
hh. The initials SNCR mean or refer to selective non-catalytic reduction.
ii. The initials SO_2 mean or refer to sulfur dioxide.
jj. The initials TSD mean or refer to Technical Support Document.
kk. The initials URP mean or refer to Uniform Rate of Progress.
ll. The initials WRAP mean or refer to Western Regional Air Partnership.

Table of Contents

I. Background

On March 2, 2012 (77 FR 12770), EPA published a notice of proposed rulemaking for the State of Nebraska, proposing to approve a portion of Nebraska's regional haze plan for the first implementation period (through 2018), and proposing to partially approve and partially disapprove those portions addressing the requirements for BART and the long-term strategy. EPA's proposed rulemaking also proposed a FIP relying on the Transport Rule to satisfy BART for SO_2 at Nebraska Public Power District, Gerald Gentleman Station, Units 1 and 2, to address the disapproval. A detailed explanation of the CAA's visibility requirements and the Regional Haze Rule[2] as it applies to Nebraska was provided in the proposed rulemaking and will not be restated here. EPA's rationale for proposing

[1] Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, 76 FR 48208 (August 8, 2011).

[2] 40 CFR 51.300–308.

partial approval and partial disapproval of the Nebraska regional haze plan and for proposing the FIP was also described in detail in the proposal, and is further described in this final rulemaking.

We requested comments on all aspects of our proposed action and initially provided a 30-day public comment period, with the public comment period closing on April 2, 2012. On April 4, 2012, a notice was published extending the public comment period to May 2, 2012, and providing notice of a public hearing to be held on April 18, 2012, if requested by April 9, 2012.[3] EPA received two requests for the public hearing, from NDEQ by letter dated March 16, 2012, and from NPCA by letter dated April 9, 2012, however, both requests were later withdrawn by letters dated March 29, 2012, and April 11, 2012, respectively.

II. Final Action

In today's action, EPA is finalizing a partial approval and partial disapproval of Nebraska's regional haze SIP, submitted on July 13, 2011. EPA is partially approving the majority of the provisions in the SIP revision as meeting some of the applicable regional haze requirements set forth in sections 169A and 169B of the Act and in the Federal regulations codified at 40 CFR 51.300–308, and the requirements of 40 CFR Part 51, Subpart F and Appendix V. EPA is disapproving the SO_2 BART determinations for Units 1 and 2 of GGS because they do not comply with EPA's regulations. EPA is also disapproving Nebraska's long-term strategy insofar as it relied on the deficient SO_2 BART determination at GGS. EPA is finalizing a FIP relying on the Transport Rule as an alternative to BART for SO_2 emissions from GGS to address these deficiencies.[4] Today's action finalizes our approval of the other portions of the SIP, as described in the proposal. However, because EPA's basis for approval of Nebraska's SIP as satisfying the requirements of the Regional Haze Rule with respect to BART for NO_X for GGS Units 1 and 2 has been modified in light of comments received on the State's determination, EPA provides additional explanation below and in the response to comments in section III of this notice.

EPA received a number of comments on the proposed rulemaking regarding Nebraska's NO_X BART determination for GGS Units 1 and 2. In its SIP submission, Nebraska determined that NO_X BART for GGS Units 1 and 2 was LNB and OFA at the presumptive BART NO_X emission rate of 0.23 lbs/MMBtu. The commenters contended that the State's estimated costs of SCR were inflated, resulting in artificially high cost effectiveness numbers, and that the deciview improvement from the use of SCR would be significant, particularly when a higher control efficiency (and lower emission limit) is considered. The commenters added that when the cost effectiveness and deciview numbers are adjusted, the resultant incremental cost effectiveness of SCR over LNB and OFA and the cost per deciview ($/dv) are below Nebraska's own thresholds, and it is therefore reasonable to determine that SCR is BART for GGS Units 1 and 2.

In response to these comments, EPA conducted further analysis of the costs of SCR at GGS. EPA found that Nebraska made some cost assumptions which were not in accordance with EPA's Cost Control Manual[5] which resulted in inflated cost estimates. When EPA's adjusted cost estimates based on the manual are used, the resultant incremental cost effectiveness and $/dv are indeed below Nebraska's own thresholds for what it considered reasonable for BART controls. In addition, the cost effectiveness and deciview improvement are within a range that many states and EPA have found to be reasonable for NO_X BART controls. Therefore, as a result of the comments received and additional analysis performed, it appears that Nebraska's NO_X BART determination of LNB and OFA at a rate of 0.23 lbs/MMBtu for GGS Units 1 and 2, by itself, is not supported by the record. However, on August 8, 2011, EPA finalized the Transport Rule and FIP.[6] The Transport Rule, as promulgated, requires 28 states in the eastern portion of the United States, including Nebraska, to significantly improve air quality by controlling EGU SO_2 and NO_X emissions that cross state lines and significantly contribute to ground-level ozone and/or fine particle pollution in other states. Nebraska is subject to the Transport Rule and FIP for NO_X at 40 CFR 52.1428. On June 7, 2012, EPA finalized its finding that the trading programs in the Transport Rule achieve greater reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas than source-specific EGU BART in those states covered by the Transport Rule.[7] Given the emission reductions provided by the NO_X limits associated with Nebraska's NO_X BART determination of LNB and OFA for GGS Units 1 and 2, which strengthen the Nebraska SIP, in conjunction with the existing Transport Rule FIP which already applies to Nebraska and has been determined to provide greater reasonable progress than BART, in today's action, EPA is finalizing its proposed approval of Nebraska's SIP as satisfying the requirements of the Regional Haze Rule with respect to BART for NO_X.

III. Public Comments and EPA Responses

During the public comment period we received written comments from the National Park Service; Omaha Public Power District; Nebraska Association of Resources Districts, on behalf of several Natural Resources Districts; Nebraska Department of Environmental Quality; the Nebraska Attorney General; Nebraska Public Power District; National Parks Conservation Association on behalf of themselves, Nebraska Environmental Action Coalition, Plains Justice, and Sierra Club; and 35 similar letters from individuals. We have summarized the comments and provided our responses below. Full copies of the comment letters are available in the docket for this rulemaking. Comments and responses below are grouped by subject rather than by commenter.

A. Comments Regarding EPA's Action

Comment 1: We received identical comment letters from thirty-five individuals encouraging more emission controls on Nebraska sources in order to address haze in the South Dakota National Parks. The letters point out that at the current rate, the South Dakota Class I areas will not meet the goal of

[3] 77 FR 20333 (April 4, 2012). EPA also provided information about the public comment period extension and notice of public hearing on its Web site on March 30, 2012, in advance of the **Federal Register** publication. EPA previously noted in the docket that the Web site notice was posted on April 6, 2012, which was incorrect.

[4] EPA notes that Nebraska may, at any time: (1) Submit a revision to their regional haze SIP incorporating the requirements of the Transport Rule at which time EPA will propose to approve the SIP and withdraw the FIP we are finalizing in today's action; (2) submit a complete SIP revision substantively identical to the provisions of the EPA trading program that is approved as meeting the requirements of 40 CFR 52.39, along with a revision to their regional haze SIP incorporating those requirements, at which time EPA will withdraw the FIP we are finalizing in today's action; or (3) Nebraska may submit a new SIP revision addressing specific BART SO_2 controls for GGS, in which case EPA will assess it against the CAA and regional haze rule requirements as a possible replacement for the FIP.

[5] EPA Air Pollution Control Cost Manual, Sixth Edition, EPA/452/B–02–001, January 2002.

[6] *See* Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, 76 FR 48208 (August 8, 2011).

[7] *See* Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific BART Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 77 FR 33642 (June 7, 2012).

natural visibility conditions for more than two hundred years. The commenters encourage EPA to require controls at Gerald Gentleman Station and Nebraska City Station specifically.

Response 1: EPA appreciates the comments, but is partially approving Nebraska's regional haze SIP and using the trading programs of the Transport Rule as a BART alternative for the reasons stated in the proposal and in other responses to comments in this action.

Comment 2: One commenter referenced and incorporated its January 21, 2011, comments to Nebraska on its draft regional haze plan. The commenter stated that it is incorporating these comments by reference because these comments are "inherently related" to this action.

Response 2: In today's rule, EPA is taking final action on the partial approval and partial disapproval of Nebraska's regional haze SIP. EPA is also taking final action on a FIP relying on the Transport Rule to satisfy BART for SO_2 at one source to address the disapproval. The comments referenced by the commenter were made to the State of Nebraska in a separate action. Nebraska timely responded to these comments. All of the comments that were incorporated by reference are addressed in today's action in EPA's response to comments. A copy of Nebraska's response can be found in the docket to this action as Appendix 3.1 to Nebraska's SIP submission.

B. Comments Regarding EPA and State Roles

Comment 3: We received several comments questioning whether we have CAA authority to disapprove Nebraska's BART determinations and LTS and determine BART through a FIP. The commenters generally contended that Nebraska followed the CAA and EPA's rules in making the BART and LTS determinations for the regional haze SIP. The commenters stated that Nebraska followed the statutory and regulatory process, and that EPA is exceeding its authority in substituting its judgment regarding appropriate BART for GGS. One commenter stated that EPA has no record upon which to support its proposed action to substitute its judgment for NDEQ. The commenters also stated that EPA cannot "arbitrarily and capriciously" substitute its own determination without a showing that Nebraska's regional haze SIP failed to comply with the requirements of the CAA.

Response 3: Congress directed in section 110 of the CAA that states would take the lead in developing implementation plans, but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of the CAA. EPA's review of SIPs is not limited to a ministerial type of "rubber-stamping" of a state's decisions. EPA must consider not only whether the state considered the appropriate factors, but also whether the state acted reasonably in doing so. EPA ensures that such authority is reasonably exercised. EPA has the authority to issue a FIP either when EPA has made a finding that the state has timely failed to submit a SIP or where EPA has found a SIP deficient. Here, EPA is approving as much of the Nebraska SIP as possible and adopting a FIP only to fill the remaining gap. Our action today is consistent with the statute.

As explained in the proposal, the State's SO_2 BART determination for GGS is not approvable for a number of reasons, including errors in Nebraska's cost analysis for FGD controls, the reasonableness of the costs of controls, the significant visibility improvement achieved as a result of installing FGD or DSI, and improper rejection of DSI. *See* 77 FR 12770, 12780. We have determined that the faults in Nebraska's analysis were significant enough that they resulted in BART determinations for SO_2 that were both unreasoned and unjustified, and therefore are not approvable.

In the absence of an approvable BART determination in the SIP for SO_2 for GGS, we are obliged to promulgate a FIP to satisfy the CAA requirements. We are also required by the terms of a consent decree with NPCA, entered with the U.S. District Court for the District of Columbia to ensure that Nebraska's CAA requirements for regional haze are finalized by June 15, 2012. Because we have found the State's SIP submission does not adequately satisfy the BART requirements in full and because we have previously found that Nebraska failed to timely submit this SIP submission, we have not only the authority, but a duty to promulgate a FIP that meets these requirements. Our action in large part approves the regional haze SIP submitted by Nebraska; the disapproval of the SO_2 BART determination for GGS and the imposition of a FIP does not encroach on State authority. This action only ensures that CAA requirements are satisfied using our authority under the CAA. We note that Nebraska may submit a new SIP revision addressing the issue of SO_2 controls for GGS, in which case we will assess it against CAA and RHR requirements as a possible replacement for the FIP. See also EPA's response to comments 32, 33, and 34, which are incorporated by reference.

Comment 4: Two commenters argued that our proposal is inconsistent with the decision of the D.C. Circuit in *Am. Corn Grower's Ass'n* v. *EPA*, 291 F.3d 1 (D.C. Cir. 2002). The commenters contended that language in the decision affirms its views regarding state authority and EPA's lack of authority in regulating the problem of regional haze. In particular, the *American Corn Growers* decision had described the CAA as "giving the states broad authority over BART determinations." *Id.* at 8.

Response 4: We disagree that our action is inconsistent with the *American Corn Growers* decision. The State's analysis of BART for SO_2 at GGS was flawed due to reasons discussed in the proposal and elsewhere in this notice. We have determined these issues resulted in non-approvable SO_2 BART determinations for GGS Units 1 and 2. We recognize the State's broad authority over BART determinations, and recognize the State's authority to attribute weight and significance to the statutory factors in making BART determinations. As a separate matter, however, a state's BART determination must be reasoned and based on an adequate record. Although we have largely approved the State's regional haze SIP, we cannot agree that CAA requirements are satisfied with respect to the SO_2 BART determination at GGS.

Comment 5: One commenter generally asserted that we lack authority to disapprove Nebraska's regional haze SIP because of past cases. The commenter cites *Train* v. *NRDC*, 421 U.S. 60, 79 (1975), *Commonwealth of Vir.* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997), and *Bethlehem Steel Corp.* v. *Gorusch*, 742 F.2d 1028 (7th Cir. 1984). Pursuant to these cases, the commenter argued that we cannot question the wisdom of a state's choices or require particular control measures if plan provisions satisfy CAA standards.

Response 5: States are required by the CAA to address the BART requirements in their SIP. Our disapproval of the SO_2 BART determination in Nebraska's RH SIP is authorized under the CAA because the State's SO_2 BART determination for GGS does not satisfy the statutory criteria. The State's analysis of BART for SO_2 at GGS was flawed due to reasons discussed in the proposal and elsewhere in this notice. While states have authority to exercise different choices in determining BART, the determinations must be reasonably supported. Nebraska's errors were significant enough that we cannot

conclude the State determined BART for SO_2 at GGS according to CAA standards. The cases cited by the commenter stress important limits on EPA authority in reviewing SIP submissions, but our disapproval of this SO_2 BART determination for GGS has an appropriate basis in our CAA authority, and does not conflict with these limitations.

Comment 6: One commenter cited to section 169A(g)(2) to support its contention that the State of Nebraska has "primary authority," where EPA has no authority or lesser authority. Section 169A(g)(2) begins, "in determining [BART] the State (or the Administrator in determining emissions limitations which reflect such technology) shall take into consideration" several requisite statutory factors. The commenter placed special emphasis on the references to the "state" in these provisions and contends that the plain language of the statute provides that states, and not EPA, have the authority to determine BART.

Response 6: We agree that states have authority to determine BART, but we disagree with commenter's assertions that EPA has no authority or lesser authority to determine BART when promulgating a FIP. As the parenthetical in section 169A(b)(2)(A) indicates, the Administrator has the authority to determine BART "in the case of a plan promulgated under section 7510(c)." In other words, the Administrator has explicit authority to determine BART when promulgating a FIP. Our BART determination utilizes our authority under 40 CFR 51.308(e)(3) to rely on an emissions trading program, here, the Transport Rule, which provides greater reasonable progress towards improving visibility than source-specific BART. We disagree that the language of the CAA limits our authority to determine BART in the case of a FIP. See also EPA's responses to comments 3, 5, and 7, which are incorporated by reference.

Comment 7: One commenter expressed its view that its arguments were reinforced by legislative history of the 1977 CAA amendments. The commenter referred to statements of Senator Edmund Muskie regarding the conference agreement on the provisions for visibility protection in those amendments. Senator Muskie stated that under the conference agreement the state, "not the Administrator," identifies BART-eligible sources and determines BART. 123 Cong. Rec. 26854 (August 4, 1977). The commenter also noted that *Am. Corn Growers Ass'n* v. *EPA* 291 F.3d 1 (D.C. Cir. 2002) used legislative history, including the Conference Report on the 1977 amendments, when the Court had invalidated past regulatory provisions regarding BART for constraining state authority. The Court stated that the Conference report confirmed that Congress "intended the states to decide which sources impair visibility and what BART controls must apply to those sources."

Response 7: We agree that the CAA places the requirements for determining BART for BART-eligible sources on states. As discussed previously, the CAA also requires the Administrator to determine BART in the absence of an approvable determination from the state. Because Nebraska's BART determination for SO_2 for GGS does not conform to the RHR and the BART Guidelines[8] and is not approvable, we are authorized and at this time required to promulgate a FIP.

Comment 8: One commenter cited to 169A(b) stating that this provision only allows for EPA to issue guidelines with technical and procedural guidance for determining BART but for the actual implementation plan to be developed by each state (except for fossil-fueled power plants with capacity that exceeds 750 megawatts (MW)). The commenter stated that the CAA does not provide EPA the authority to disapprove a BART decision or require specific controls for BART.

Response 8: States shoulder significant responsibilities in CAA implementation and effectuating the requirements of the RHR. EPA has the responsibility of ensuring that state plans, including regional haze SIPs, conform to CAA requirements. None of the CAA provisions cited by commenters change our conclusion that we have authority and duty to issue a FIP to satisfy BART requirements given that Nebraska's regional haze SIP is not fully approvable. Our inability to approve the State's BART determination for SO_2 for GGS means we must follow through on our non-discretionary duty to promulgate a FIP.

Comment 9: Several commenters who argued that the plain language of the CAA requires that states are the primary or only BART determining authorities have also cited our preamble language from past **Federal Register** publications that they believe reinforces their contention. For example, several commenters cited 70 FR 39104 at 39107, which reads in part, "the State must determine the appropriate level of BART control for each source of BART." One commenter also cited 70 FR 39104 at 31958 which provides that the "State will determine a 'best system of continuous emission reduction' based upon its evaluation of these factors." One commenter cited to 70 FR 39104 at 39170–39171 stating the State has discretion to determine the order in which it should evaluate control options for BART. One commenter also commented that the CAA provides Nebraska with great discretion to balance the five statutory factors and that states are free to determine the weight and significance assigned to each factor.

Response 9: We agree that states are assigned statutory and regulatory authority to determine BART and that many past EPA statements have confirmed state authority in this regard. Although the states have the freedom to determine the weight and significance of the statutory factors, they have an overriding obligation to come to a reasoned determination. As detailed in our proposal and the supporting TSD, Nebraska's SO_2 BART determination for GGS was based on flawed analysis and an unreasonable conclusion. Because the State's SO_2 BART determination for GGS is not approvable, we are obligated to step into the shoes of the State and arrive at our own BART determinations.

C. Comments Regarding Public Notice

Comment 10: One commenter insinuated that EPA held a meeting with NDEQ and local stakeholders in North Platte, Nebraska on April 12, 2012, "in lieu" of a public hearing.

Response 10: The April 12, 2012, meeting was not held "in lieu" of a public hearing. As the commenter notes, NDEQ requested a public hearing on March 16, 2012, and then on April 2, 2012, withdrew the request for public hearing. As required by section 307(d) of the CAA, EPA provided the opportunity for public hearing on its proposed FIP; although two parties initially requested a public hearing, both requests were withdrawn. Because the requests were withdrawn and no other timely requests for public hearing were received, EPA canceled the public hearing that had been scheduled to take place. EPA's notes from the April 12, 2012, meeting are available in the docket for this action.

Comment 11: NPPD submitted comments expressing concerns about EPA's cancellation of the public hearing and decision to have a "private" meeting with NPCA as a substitute for the public hearing. NPPD requested to attend the meeting between EPA and NPCA, and stated that not allowing NPPD and other interested parties to attend the meeting deprived them of their due process rights in this matter.

[8] The BART Guidelines: 40 CFR Part 51, Appendix Y.

Response 11: Due to the time sensitive nature of this comment and request, EPA responded to NPPD by letter on April 17, 2012. For completeness of our response to comments in today's action, EPA summarizes its response here. Copies of NPPD's April 13, 2012, letter and EPA's April 17, 2012, letter are included in the docket for this rulemaking. EPA disagrees with the suggestion that all necessary public notice procedures were not followed by EPA, or that any parties were deprived of their due process rights. During the public comment period, EPA received two requests for a public hearing, one from NDEQ and one from NPCA, both of which were subsequently withdrawn by the requestors.[9] No other requests for the public hearing were received during the prescribed time frame, including from NPPD, and therefore, EPA cancelled the public hearing.

NDEQ and NPCA both requested to meet with EPA regarding our proposed rule. The meetings with NDEQ and NPCA were not "public meetings" and no public notice of these meetings was provided. EPA did, however, provide a summary of the meetings for the docket.[10] EPA meets with various stakeholders regarding proposed actions on a routine basis. EPA met with NPCA representatives to listen to their interests just as EPA met with NPPD at the meeting hosted by NDEQ. NPPD provided no specific basis for its contention that it was denied "due process", and it submitted extensive comments (46 pages) on the proposed rule.

D. Comments About the Benefits of Regional Haze Pollution Controls

Comment 12: One commenter noted that pollutants that cause visibility impairment also harm public health. Specifically, the commenter asserted the following: "Regional haze pollutants include NO_X, SO_2, PM, ammonia, and sulfuric acid. NO_X is a precursor to ground level ozone, which is associated with respiratory diseases, asthma attacks, and decreased lung function. In addition, NO_X reacts with ammonia, moisture, and other compounds to form particulates that can cause and worsen respiratory diseases, aggravate heart disease, and lead to premature death. Similarly, SO_2 increases asthma symptoms, leads to increased hospital visits, and can form particulates that aggravate respiratory and heart diseases that cause premature death. PM can penetrate deep into the lungs and cause a host of health problems, such as aggravated asthma, chronic bronchitis, and heart attacks."

The commenter cited to EPA's estimates that in 2015, full implementation of the RHR nationally will prevent 1,600 premature deaths, 2,200 non-fatal heart attacks, 960 hospital emissions, and over one million lost school and work days. The RHR will result in health benefits valued at $8.4 to $9.8 billion annually.

The commenter also stated that haze-causing emissions harm terrestrial and aquatic plants and animals, soil health and moving and stationary water bodies by contributing to acid rain, ozone formation, and nitrogen deposition. The commenter also stated that haze-causing pollutants are precursors to ozone. The commenter stated that ground-level ozone formation impacts plants and ecosystems in a variety of ways.

Response 12: We appreciate the commenter's concerns regarding the negative human health and ecosystem impacts of emissions from the units at issue. We agree that the same NO_X emissions that cause visibility impairment also contribute to the formation of ground-level ozone, which has been linked with respiratory problems, aggravated asthma, and even permanent lung damage. We also agree that SO_2 emissions that cause visibility impairment also contribute to increased hospital visits and can form particulates that aggravate respiratory and heart diseases, and that both NO_X and SO_2 cause acid rain. We agree that the same emissions that cause visibility impairment can form fine PM and be inhaled deep into lungs, which can cause respiratory problems, decreased lung function, aggravated asthma, bronchitis, and premature death. We agree that these pollutants can have negative impacts on ecosystems, damaging plants, trees, and other vegetation (including crop yields), which could have a negative effect on species diversity in our ecosystems. Therefore, although our action concerns visibility impairment, we note the potential for significant improvements in human and ecosystem health.

Comment 13: We received one comment that the proposed action would help the economy in a variety of ways. The commenter stated that tourism in national parks provides Federal and local private sector revenue and provides hundreds of thousands of jobs. The commenter stated that national park tourism is a critical component to the economy of the Midwest and deterioration in improvement to visibility at a national park can reduce tourism to those parks. The commenter also stated that requiring facilities to install controls also creates jobs.

Response 13: Although we did not consider the potential positive benefits to local economics in making our decision today, we do acknowledge that improved visibility may have a positive effect on tourism and local jobs.[11] This action may also result in significant improvements in human health. Improved human health can reduce healthcare costs and reduce the number of missed school and work days in the community.

E. Comments Regarding Reasonable Progress Goals and Long-Term Strategy

Comment 14: One commenter states that the development of the LTS is the responsibility of each affected state, not the EPA, and the state is only required to ensure that the RPG of the state containing the Class I area is met. EPA proposed disapproval of Nebraska's LTS on the basis that it relied on the deficient BART determination for SO_2 at GGS. The commenter contends that this rationale is not consistent with the Federal requirements, and that Nebraska adequately addressed all requirements for the LTS set forth at 40 CFR 51.308(d)(3) in its regional haze SIP submission, including consultation with South Dakota and other affected states, tribes, and FLMs on coordinated emission management strategies; provision of all applicable technical information pertaining to the apportionment of emission reduction obligations, including the baseline emissions inventory; identification of all anthropogenic sources of visibility impairment considered by the State; and consideration of the factors at 40 CFR part 51.308(d)(3)(v). Another commenter maintains that because Nebraska's SO_2 BART determination was not defective, Nebraska's LTS should be approved.

Response 14: As further explained elsewhere in today's action, Congress directed in section 110 of the CAA that states would take the lead in developing implementation plans, but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of the CAA. EPA must consider not only whether the State considered the appropriate factors in development of its LTS, but also whether the State acted reasonably in doing so. The commenter correctly cites

[9] Copies of all letters requesting a public hearing, and later withdrawing those requests, as well as summaries of all meetings, are provided in the docket for EPA's rulemaking, Docket No. EPA–R07–OAR–2012–0158.

[10] A summary of the meeting with NPCA was provided for the docket prior to the time that NPPD submitted its comments on the proposed rule.

[11] EPA has addressed employment impacts of the Transport Rule. 76 FR 28208, 48317–48319.

the factors that must be considered in development of the LTS, and notes that EPA largely approved the LTS, except for that portion that relies on what the EPA proposed was the State's flawed SO_2 BART determination for GGS. EPA disagrees with the commenter's statements that this does not provide a basis for disapproval of a portion of the Nebraska's LTS. Section 169A of the CAA and the EPA's implementing regulations require states to establish LTS for making reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Implementation plans must also give specific attention to certain stationary sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART. Because EPA cannot fully approve SO_2 BART for GGS, we cannot fully approve a LTS that relies on it.

For the reasons cited elsewhere in today's action, EPA disagrees that Nebraska's SO_2 BART determination for GGS was reasonable and in accordance with 40 CFR 51.308(e) and the BART Guidelines. Therefore, in this action, EPA appropriately disapproves Nebraska's LTS only insofar as it relied upon the improper SO_2 BART determination for GGS. See also EPA's response to comment 3, which is incorporated by reference.

Comment 15: Several commenters point out what they contend are inconsistencies between EPA's approval of the South Dakota RPGs for Badlands and Wind Cave Class I areas,[12] and today's action. The commenters state that Nebraska's work through CENRAP and direct consultation with South Dakota as well as other states, tribes and FLMs ensured that all entities were fully informed of the proposed decisions in the Nebraska regional haze SIP. If additional measures were necessary to ensure that South Dakota met their RPGs, it would have been appropriate for either (1) South Dakota to request the additional measures from Nebraska, or (2) EPA to disapprove the LTS of South Dakota and for South Dakota to notify Nebraska that additional measures were needed. However, EPA approved the South Dakota regional haze SIP in its entirety. The commenter asserts that the EPA region with oversight over a Class I area is tasked with ensuring that the applicable state's RPGs are sufficient and practical. If that state's RPGs are not sufficient or practical, each state participating in the regional planning process for the applicable Class I area would be required to re-evaluate their LTS and make appropriate revisions to ensure they met their apportionment of emission reduction obligations necessary for achieving reasonable progress. The commenters contend that through its approval of the South Dakota regional haze plan, EPA verified that each state involved in the regional planning process, including Nebraska, met their apportionment of emission reductions, without requiring any implementation of FGD at GGS. Another commenter asserts that the emission projections used in the WRAP regional modeling clearly assumed scrubbers operated at 0.15 lbs/MMBtu would be installed to meet SO_2 BART at GGS, and because our proposal relied on the Transport Rule in lieu of source-specific BART for SO_2 at GGS, South Dakota will not likely meet its reasonable progress goals at Badlands and Wind Cave National Parks, which already fall short of the uniform rate of progress towards natural background visibility conditions. Commenters also contend that these same issues apply to Colorado, Oklahoma, Missouri, and Arkansas, which also relied on RPO modeling and assumed presumptive SO_2 BART emission reductions at GGS, and at a minimum, GGS should meet presumptive BART emission levels.

Response 15: EPA disagrees that inconsistencies exist between today's action and EPA's approval of South Dakota's RPGs, and disagrees that inclusion of presumptive BART for purposes of air quality modeling necessitates a source-specific SO_2 BART FIP for GGS.

South Dakota, as a state hosting Class I areas, established goals for Badlands and Wind Cave National Parks that provide for reasonable progress towards achieving natural visibility conditions, in accordance with 40 CFR 51.308(d)(1). As set forth in EPA's proposed and final approval of South Dakota's regional haze SIP,[13] South Dakota constructed its uniform rate of progress and set the RPGs consistent with the requirements of the RHR.

To set RPGs, states looked to the air quality modeling performed by the RPOs. The modeling assumed emission reductions from each state based on extensive consultation among the states as to appropriate strategies for addressing haze. The air quality models used to support the regional haze SIPs are extremely complex, and due to the time consuming nature of performing the modeling, this work was performed early in the process. The emissions projections by the RPOs, relied upon in the air quality modeling, incorporated the best available information at the time from the states, and utilized the appropriate methods and models to provide a prediction of emissions from all source categories into the future. There was an inherent amount of uncertainty in the assumed emissions from all sources, including emissions from BART-eligible sources, as the final control decisions by all of the states were not yet complete. Nebraska provided the RPOs with their best estimates of what their regional haze SIP would achieve as inputs for the modeling, before they had made final BART determinations. The regional modeling incorporated BART presumptive emission reductions, and other states relied on these reductions in setting their RPGs.

Nebraska's BART determination ultimately did not require presumptive SO_2 BART for GGS, and Nebraska did not provide any information demonstrating those emission reductions would be otherwise achieved. The relevant requirement at 40 CFR 51.308(d)(3)(ii) is that Nebraska must demonstrate that it has included all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for Class I areas where it causes or contributes to impairment. Class I states like South Dakota originally set the reasonable progress goals in their SIP based on emission reductions expected to be achieved through application of presumptive BART, CAIR, and other emission reductions qualified for that purpose. South Dakota had the opportunity to comment on Nebraska's draft BART permits as well as the overall regional haze SIP, and did not ask for additional emission reductions from Nebraska. As Nebraska did establish a BART limit for GGS and informed South Dakota that its BART determination deviated from what was included in the modeling, the fact that the final BART determination varied from the predictions is not grounds for disapproving either SIP. The RPGs are not enforceable goals. South Dakota will have the responsibility to consider whether other reasonable control measures are appropriate to ensure reasonable progress during subsequent periodic progress reports and regional haze SIP revisions as required by 40 CFR

[12] 77 FR 24845 (April 26, 2012).

[13] EPA's proposed approval of South Dakota's regional haze SIP is found at 76 FR 76646 (Dec. 8, 2011) and EPA's final approval is found at 77 FR 24845 (April 26, 2012).

51.308(f)–(h), and may at that time consider asking Nebraska for additional emission reductions.

Comment 16: One commenter stated that the source retirement discussion in the Nebraska SIP submission was inadequate, as it did not contain a discussion of changes in energy and other markets and their likely effect on future emissions.

Response 16: The requirement in 40 CFR 51.308(d)(3)(v) is for a state to consider source retirement and replacement schedules as a factor in developing its long-term strategy. Nebraska considered source retirements and replacements as a part of estimating the change in emissions from the baseline year of 2002 through the first implementation period for regional haze SIPs (2018). As stated in the SIP, 2002 emissions were grown to year 2018 utilizing EPA approved methods including the use of MOBILE 6.2 vehicle emission modeling software, and the Integrated Planning Model (IPM) version 2.93 for EGUs. These tools include estimations of source retirement and replacements when accounting for the effects of Federal and state rules. Thus, we believe that Nebraska adequately considered source retirements and replacements when developing its long-term strategy.

Comment 17: One commenter criticized Nebraska's lack of analysis of potential emission reductions from stationary sources that are not BART-eligible or that are BART-eligible but not subject-to-BART.

Response 17: The long-term strategy requirements of the rule do not specifically require an analysis of the potential emission reductions from stationary sources that are not BART-eligible or that are BART-eligible but not subject-to-BART. The requirement is for the State to identify all anthropogenic sources of visibility impairment considered by the State in developing its long-term strategy. The CENRAP modeling demonstration provided by the State considered emissions of all anthropogenic source categories including major and minor stationary sources, mobile sources, and area sources in developing its strategy. With the exception of the SO_2 component of the BART requirements as described elsewhere in our proposal and in this notice, the State has successfully demonstrated compliance with all other remaining elements of the long-term strategy requirements.

Comment 18: One commenter questioned why EPA would point out in its proposed action that, "* * * although Nebraska participated as a member state in CENRAP, the greatest impacts from Nebraska sources occur in a WRAP state—South Dakota."

Response 18: This statement is merely reiterating the fact that the Class I areas most impacted by emissions from Nebraska are in South Dakota which is a participant in a different RPO, as noted elsewhere in the proposal.

F. Comments Regarding Visibility Improvement Metrics

Comment 19: One commenter stated that if EPA is relying on a particular threshold for determining the significance of a visibility benefit, this threshold should be explained and identified.

Response 19: There is no particular threshold for determining significance of visibility benefit in the regional haze rule. Significance is a source- and Class I-specific evaluation, meaning that it depends on how much visibility improvement is needed at the Class I area(s), how much a specific source impacts the Class I area(s), and the cost effectiveness and potential visibility improvement of available control options. States have latitude to determine these thresholds,[14] providing support and a reasonable and adequate basis for why they selected the thresholds, and to determine BART and reasonable progress controls, in consultation with other impacted states. As long as this evaluation is done adequately and the states provide a reasoned basis for their decisions, EPA will defer to the state.

Comment 20: One commenter remarked that they agree with use of the dollars per deciview metric to select BART controls, but encourage cumulative visibility benefits to be included, rather than just results at the nearest Class I area. They reiterate EPA's comments in the January 21, 2011, letter to NDEQ on the draft SIP, stating that "a $/dv analysis is likely to be less meaningful if the analysis does not take into account the visibility impacts at multiple Class I areas or ignores the total improvement (i.e., the frequency, magnitude, and duration of the modeled changes in visibility)."

Another commenter discussed the importance of considering cumulative visibility benefits, both as the sum of smaller improvements at one Class I area and as the benefit of an action to all impacted Class I areas, as EPA has done previously in other actions, such as Oklahoma and New York.

Response 20: The BART Guidelines list the dollars per deciview ratio as an additional cost effectiveness metric that can be employed along with dollars per ton in a BART evaluation. However, EPA does not have guidelines on how the dollars per deciview metric is to be used, and there is inconsistency in how states have calculated it. We believe that dollars per deciview is one of several metrics that can be used to analyze cost of visibility improvement, and reaffirm our position that the calculation is more meaningful if cumulative visibility benefits are accounted for.

Comment 21: One commenter called the use of a cumulative impacts analysis for GGS "unauthorized". The commenter pointed out that a BART-eligible source is "subject to BART" only if it "may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal *area,*" adding emphasis to area.

Response 21: We consider this to be somewhat of a moot point, as the source in question, GGS, clearly causes visibility impairment at the closest Class I area, Badlands, even without consideration of cumulative impacts.[15]

However, as stated previously and consistent with other EPA actions on regional haze, we also believe that a cumulative impacts analysis is a useful tool for examining the impact of a BART-subject source and the visibility improvement to be gained by the addition of emission controls, and do not agree that use of this tool is unauthorized or unreasonable.

Comment 22: One commenter criticizes the lack of attention EPA gives in its proposed action to Nebraska's dollar per deciview analysis presented in its SIP. The commenter reiterates Nebraska's conclusions on cost per deciview of improvement, saying that the dollars per deciview of visibility improvement for FGD at GGS far exceeded that of any other utility Nebraska compared it to. The commenter states that EPA "does not and cannot disturb Nebraska's threshold of $40 million per deciview per year."

Response 22: EPA reviewed all of Nebraska's analysis presented in the SIP, including total annualized costs, dollars per ton, dollars per deciview, incremental dollars per ton, incremental dollars per deciview, and frequency (number of days) impacted. The State is

[14] BART guidelines at 70 FR 39170: However, we believe the States have flexibility in setting absolute thresholds, target levels of improvement, or de minimis levels since the deciview improvement must be weighed among the five factors, and States are free to determine the weight and significance to be assigned to each factor. For example, a 0.3, 0.5, or even 1.0 deciview improvement may merit stronger weighting in one case versus another, so one "bright line" may not be appropriate.

[15] CALPUFF modeling shows that GGS impacts Badlands an average of 2.93 dv in the baseline years of 2001–2003.

free to set the thresholds it chooses, as long as it provides support and a reasonable and adequate basis for the threshold. Nebraska set a cost threshold at $40 million/dv/year as reasonable for BART controls, however, the State did not provide justification or basis for why it chose that threshold.

For BART, the BART Guidelines require that cost effectiveness be calculated in terms of annualized dollars per ton of pollutant removed, or $/ton,[16] so the language in our proposal focuses on $/ton.

In addition, if the cost of controls are overestimated, and the true efficiency of the control technology is not modeled, as is the case with the BART analysis at GGS, the result is a metric that overestimates cost and underestimates visibility improvement.

As seen in Table 1, even with overestimated costs, if visibility improvement is considered on a cumulative basis, the cost per deciview for SO_2 control is under Nebraska's threshold—$34,238,388. Without overestimated costs, even at the presumptive level of control, dollars per deciview are half of Nebraska's threshold—$20,987,655. The cumulative visibility benefits of more stringent levels of control, such as 0.06 lbs/MMBtu, is unknown, but would clearly be well under half of the threshold Nebraska set as being cost effective for BART controls on a dollars per deciview basis.

TABLE 1—RANGE OF GGS DRY SCRUBBER COST EFFECTIVENESS

	Dry FGD (Nebraska's original BART analysis)	Dry FGD EPA's estimate revised from comments		
SO_2 Baseline	49,785	49,785		
Uncontrolled Emission Level (lbs/MMBtu)	0.749	0.749		
Controlled Emission Rate (lbs/MMBtu)	0.15	0.15	0.11	0.06.
Percent Reduction	80%	80%	85.3%	92%.
SO_2 Emission Reduction (tons)	39,815	39,815	42,473	45,797.
Total Annualized Cost	$108,535,690	$66,530,865	$67,871,854	$69,519,846.
Total Cost Effectiveness ($/ton)	$2,726	$1,671	$1,598	$1,518.
$/dv (Badlands)	$139,148,321	$85,295,981	unknown[a]	unknown.
$/dv (Cumulative)[b]	$34,238,388	$20,987,655		

[a] Nebraska did not conduct visibility modeling for FGD at a rate of 0.11 or 0.06 lbs/MMBtu SO_2.
[b] In calculating cumulative visibility improvement, NDEQ only considered the two closest Class I areas, Badlands and Wind Cave in South Dakota. As described in our TSD, we believe that it is more appropriate to calculate cumulative improvement from all six Class I areas, which are impacted greater than 0.5 dv from GGS Units 1 and 2.

G. Comments Regarding BART for Particulate Matter

Comment 23: One commenter stated that EPA failed to propose approval or disapproval of Nebraska's PM BART determination for NCS and GGS. The commenter provides that EPA characterized Nebraska's PM BART analyses for NCS and GGS as "* * * direct PM emissions from [the facility] do not significantly contribute to visibility impairment, and therefore, a full five factor BART analysis for PM was not needed." 77 FR 12778. The commenter contends that although EPA proposed to agree with these conclusions, it did not approve or disapprove Nebraska's further conclusion that BART for PM is existing controls and requirements, which it is required to do.[17]

Response 23: We disagree with the commenter's assertion that EPA is required to approve or disapprove Nebraska's conclusion that BART for PM is existing controls and requirements. The RHR and the BART Guidelines [18] require a determination as to whether a source is subject to BART, that is, whether the BART-eligible source emits any pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area. In performing this analysis, Nebraska appropriately utilized source-specific CALPUFF modeling to analyze whether SO_2, NO_X, and direct PM emissions contributed to visibility impairment at Class I areas. As a result of the modeled demonstration that impairment due to direct PM emissions is minimal, Nebraska appropriately concluded that direct PM emissions from GGS and NCS do not significantly contribute to visibility impairment. Under the RHR and BART Guidelines, the State is not required to go further in performing a full-five factor analysis for PM to determine BART. While the State is free to make additional findings related to existing controls at GGS and NCS, EPA is not required to act upon them as those findings go beyond what is required by the rule and EPA has determined the State met the minimum requirements for BART analysis for direct PM.

H. Comments Regarding BART for NO_X at Gerald Gentleman Station

Comment 24: Many comments were received regarding the cost estimations for SCR at GGS. The commenters asserted the cost estimations provided

[16] 70 FR 39167.

[17] Nebraska Regional Haze SIP, submitted July 13, 2011, at pages 45 and 48.

[18] The Regional Haze Rule at 40 CFR 51.308(e)(1)(ii)(B) states that the "determination of BART for fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts must be made pursuant to the guidelines in Appendix Y of this part (Guidelines for BART Determinations Under the Regional Haze Rule)."

by Nebraska [19] were not supported by adequate information, such as specific vendor quotes. The commenters argued that Nebraska inappropriately included several costs such as escalation, inflation, allowance for funds used during construction (AFUDC), and an unjustified expense for taking a unit offline to install an SCR (rather than installing it during a routine outage). They also contended that site-specific factors such as real interest rates (5.25 percent rather than 7 percent) and a 30-year expected lifetime (rather than 20 years) should be used. The commenters asserted that these overestimations significantly inflate the cost of controls, totaling $377/kW, higher than known costs associated with any SCR installation. The commenters contend that no information was presented in the Nebraska BART analysis showing space constraints or particular complexity of retrofit which would justify such high cost estimations.

Several commenters stated their belief that at Nebraska's calculated cost of $2,297/ton, LNB/OFA plus SCR is cost effective for NO_X control at GGS. The commenters assert that this cost is well within the range of cost effectiveness values required by EPA and other states, and in fact, below the values Nebraska found cost effective for SO_2 controls at GGS. The commenters assert that if the costs of controls were adjusted to correct for inconsistencies with the Cost Control Manual methodology, the controls would be even more cost effective.

One commenter presented a NO_X BART cost estimation for SCR at GGS using EPA's Cost Control Manual and Integrated Planning Model (IPM) for each of the two Units individually. The commenter concluded that LNB/OFA plus SCR for Units 1 and 2 at a limit of 0.05 lbs/MMBtu would remove almost 20,000 tons of NO_X per year and cost approximately $1,900 per ton. They argue that with this more reasonable cost estimate, the costs of control are below Nebraska's stated threshold of $40 million/dv, at $12–19 million/cumulative dv.

Response 24: As described below and in Appendix D, E, and F, we agree with the commenters that Nebraska's SCR costs were overestimated by including expenses inconsistent with EPA's Cost Control Manual. In response to these comments, we conducted an evaluation of the cost of SCR, using the information provided by Nebraska and adjusting it in accordance with the Cost Control Manual. We made a number of adjustments to Nebraska's SCR cost estimation, including:

- Adjustments to the engineering, planning, and construction (EPC) cost
- Adjustments to the contingencies
- Deletion of escalation and allowance for funds used during construction (AFUDC)
- Inclusion of a NO_X control rate cost scenario of 0.05 lbs/MMBtu
- Increasing the SCR operational life from 20 to 30 years
- Adjusting the capital recovery factor (CRF)

We did not exclude the cost of taking a unit offline to install an SCR (rather than installing it during a routine outage), as we do not have any information to show that this is an unreasonable assumption. However, we did reduce this annualized charge from $1,021,000 to $833,683, by recalculating it based on our CRF. If the cost was eliminated entirely, it would only change the cost effectiveness $/ton figures by approximately 2 percent. Therefore, even if the commenter is correct that this charge is unwarranted, it would not have likely impacted Nebraska's decision to eliminate SCR as BART.

Table 2 summarizes EPA's adjustments to Nebraska's cost estimates for SCR control. Nebraska conducted the BART evaluation for the two units at GGS together, so the results presented in Table 2 are combined for the two units.

TABLE 2—REVISED NO_X COST CALCULATIONS (SCR), GERALD GENTLEMAN STATION, UNITS 1 & 2

	Original analysis (NDEQ)		Revised analysis (EPA)	
	LNB/OFA	LNB/OFA + SCR	LNB/OFA + SCR	
Baseline (before control)	30,243	30,243	30,243	30,243.
Emission rate (lbs/MMBtu)	0.23	0.08	0.08	0.05.
Control efficiency	49%	82%	82%	89%.
Controlled emissions (tpy)	15,287	5,317	5,317	3,323.
Tons NO_X removed (total)	14,956	24,926	24,926	26,920.
Total Annualized Cost	$2,960,000	$57,251,000	$39,467,000	$41,760,000.
Total cost per ton	$198	$2,297	$1,583	$1,551.
Tons NO_X removed (incremental over LNB/OFA)	N/A	9,970	9,970	11,964.
Incremental cost per ton	N/A	$5,445	$3,662	$3,243.
Incremental visibility improvement (delta dv)	N/A	0.49	[a] 0.49	unknown[b].
Total visibility improvement, Badlands	0.66	1.15	[c] 1.15	unknown.
Total visibility improvement, Cumulative [d]	1.94	3.21	3.21	unknown.
Total $/dv, Badlands	$4,484,848	$49,783,478	$34,319,130	unknown.
Total $/dv, Cumulative	$1,525,773	$17,835,202	$12,295,016	unknown.

[a] **Note** that Nebraska modeled the two units at GGS together. The incremental improvement of 0.49 dv is the average improvement over the three baseline years. If this analysis was separated by unit, the per-unit incremental improvement would be approximately 0.24 dv on average. If the maximum incremental improvement were considered, it would be 0.54 dv for the two units combined, or approximately 0.27 dv for each unit.

[b] Nebraska only conducted CALPUFF modeling at the control rate of 0.08 lbs/MMBtu. We have not determined the predicted visibility improvement resulting from consideration of a lower rate, such as 0.05 lbs/MMBtu.

[c] Total average improvement for the baseline period for the two units combined is 1.15 dv. Average improvement for each unit would be approximately 0.575 dv. Total maximum improvement for the two units would be 1.24 dv, or approximately 0.62 dv each.

[d] GGS impacts 6 Class I areas more than 0.5 dv. Improvements from these 6 areas are included in this calculation.

EPA's reevaluation of Nebraska's SCR cost estimate resulted in lowering the total capital cost from $478,151,000 to $320,209,000 for the 0.08 lbs/MMBtu emission rate, a reduction of approximately 33 percent. This results in an incremental cost effectiveness change from Nebraska's estimate of $5,445/ton to $3,662/ton, or $3,243 per

[19] The commenters refer to these cost estimations as NPPD's. NDEQ accepted NPPD's estimations and submitted them to EPA, so for consistency, we are referring to these estimations as "Nebraska's."

ton if the 0.05 lbs/MMBtu rate is considered.

When the costs are recalculated, it appears that the costs are within a range that many states and EPA have found to be reasonable for NO_X BART controls. EPA also acknowledges that the recalculated costs are below Nebraska's own thresholds for incremental cost effectiveness ($5,000 per ton) and cost effectiveness per deciview ($40 million per deciview), although EPA notes that Nebraska did not provide justification or support in the record for their selected cost effectiveness thresholds.

Therefore, as described here and in section II of this notice, it appears that Nebraska's NO_X BART determination of LNB and OFA at a rate of 0.23 lbs/MMBtu for GGS Units 1 and 2, by itself, is not supported by the record. However, as described in section II of this notice, Nebraska is subject to the Transport Rule and FIP for NO_X at 40 CFR 52.1428. EPA has found that the trading programs in the Transport Rule achieve greater reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas than source-specific BART in those states covered by the Transport Rule.[20]

Given the emission reductions provided by the NO_X emission limits associated with Nebraska's NO_X BART determination of LNB and OFA for GGS Units 1 and 2, which strengthen the Nebraska SIP, in conjunction with the existing Transport Rule FIP which already applies to Nebraska and has been determined to provide greater reasonable progress than BART, in today's action, EPA is finalizing its proposed approval of Nebraska's SIP as satisfying the requirements of the Regional Haze Rule with respect to BART for NO_X, and therefore do not inquire further here as to whether the cost effectiveness of SCR is low enough and the associated deciview improvement significant enough to reasonably determine that SCR is BART for GGS Units 1 and 2.

Comment 25: One commenter notes that Nebraska rejected SCR on the basis that it was not cost effective on an incremental basis, a metric which the commenter believes was given undue weight. The commenter contends that if the overestimated costs were corrected even slightly, the incremental cost per ton would be under Nebraska's "arbitrary" threshold for incremental cost effectiveness of $5,000 per ton.

The commenter asserts that the incremental visibility benefits of SCR at GGS are significant. The commenter notes that the control efficiency of SCR used in the State's analysis is less than what the technology is capable of achieving, and if modeling was conducted at a more stringent rate, visibility benefits would be even greater.

The commenter highlights an EPA Region 8 BART decision for North Dakota, requiring SNCR and LNB/separated OFA at an incremental cost of $5,441 per ton at a facility where the incremental visibility benefit was only 0.105 dv.[21]

Response 25: As stated in response 24, we did adjust Nebraska's cost estimations, and found that the incremental cost for SCR at GGS was likely closer to $3,662 per ton, rather that the State's estimate of $5,445 per ton. The commenter correctly suggests that this adjusted cost is less than Nebraska's stated cost effectiveness threshold of $5,000 incremental cost per ton. We agree with the commenter that the State did not support its chosen thresholds in the record.

We agree with the commenter's suggestion that if the visibility modeling had been conducted at a more stringent control rate of 0.05 lbs/MMBtu, which an SCR is capable of achieving, the visibility improvements would likely be greater than what is stated in Nebraska's SIP submission, and within a range many states and EPA have found to be significant for control.

Because of some of the deficiencies highlighted by the commenters, we are not able to conclude that the State's NO_X BART determination was supported by the record.

We respond to comments about the control efficiency of SCR in response 27.

In today's action, EPA determined that Nebraska's NO_X BART determination for GGS is not supported by the record, therefore, the commenter's suggestion that EPA's approval of Nebraska's NO_X BART determination for GGS is inconsistent with EPA's action on North Dakota's regional haze SIP is no longer applicable. In today's action, given the emission reductions provided by the NO_X limits associated with Nebraska's NO_X BART determination of LNB and OFA for GGS Units 1 and 2, which strengthen the Nebraska SIP, in conjunction with the existing Transport Rule FIP which already applies to Nebraska and has been determined to provide greater reasonable progress than BART, EPA is finalizing its proposed approval of Nebraska's SIP as satisfying the requirements of the Regional Haze Rule with respect to BART for NO_X. This action is not inconsistent with EPA's action on North Dakota's regional haze SIP. In that action, EPA disapproved North Dakota's NO_X BART determination for these Units because the State "relied on cost estimates that greatly overestimated the costs of controls" [22] and "the faults in the cost estimates were significant enough that they resulted in BART determinations for NO_X for CCS 1 and 2 that were both unreasoned and unjustified." 77 FR 20900. We note that in the North Dakota case, the State estimated the costs for SNCR at $8,551, and EPA's revised cost estimate was $2,500, a reduction in costs of 71 percent. This overestimation is much greater than the GGS case, when our analysis only reduced the cost 33 percent. Furthermore, we note that the visibility impacts of these two sources are different, making different conclusions about BART plausible.[23]

Once EPA Region 8 disapproved the Great River Energy Coal Creek Station Units 1 and 2 NO_X BART determinations in North Dakota's SIP, a FIP was required, and EPA conducted its own source-specific consideration of cost, visibility improvement, and the other regulatory factors to determine what was appropriate as BART.

Comment 26: We received comments noting that the two Units at GGS were evaluated in combination. The commenters believe that because the Units are different sizes and have different existing controls installed, a separate analysis for the two Units would be more appropriate. Also, the proposed BART limit was combined across the two Units, and the commenter asserts that Unit-specific limits are required.

Response 26: We acknowledge that the pre-control NO_X emissions profiles for Units 1 and 2 at GGS are different. However, when the commenter conducted a cost analysis for adding SCR for each Unit individually and adjusting the baseline and control efficiency as they saw appropriate, their cost conclusions were similar to EPA's. The commenters calculated the incremental cost to add SCR at a limit of 0.05 lbs/MMBtu to be $3,481 per ton

[20] See Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific BART Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 77 FR 33642 (June 7, 2012).

[21] 77 FR 20894 (April 6, 2012); proposed at 76 FR 58570 (Sept. 21, 2011).

[22] The state estimated costs for SNCR at $8,551, and EPA's revised cost estimate was $2,500, a reduction in costs of 71 percent.

[23] CCS Units 1 and 2 impact the nearest class I area 4.04–4.48 dv, as opposed to the 2.828–3.121 dv impact due to GGS Units 1 and 2 on the nearest Class I area.

for the two Units,[24] while EPA's calculations showed an incremental cost of $3,243 at this limit.

In terms of visibility analysis, we believe it was reasonable for the State to combine the two co-located units for purposes of modeling. Again, we note that when the commenter adjusted the baseline individually for the two units as they saw fit, the result was nearly identical to the State's visibility conclusions. The commenters calculated a visibility improvement of 0.24 dv at Unit 1 and 0.23 dv at Unit 2, for a two-unit total of 0.46 dv[25] incremental improvement from SCR at Badlands and 1.29 dv cumulatively. The State's two-unit incremental improvement was 0.49 dv at Badlands and 1,27 dv cumulatively. Therefore, we disagree that an analysis for each unit was necessary, as it does not appear that it would have yielded a different BART determination result.

We disagree with the commenter that unit-specific limits are required. The BART Guidelines, section V state: "You should consider allowing sources to 'average' emissions across any set of BART-eligible emission units within a fence line, so long as the emission reductions from each pollutant being controlled for BART would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute BART-eligible source."

Therefore, it was acceptable for the State to average the BART limits over the two units.

Comment 27: Several commenters stated that Nebraska underestimated the ability of modern SCR systems to control NO_X. Nebraska's SCR evaluation was conducted at a limit of 0.08 lbs/MMBtu, which amounts to approximately an 82 percent control efficiency. However, the commenters present information showing that SCR is capable of achieving at least a 90 percent control efficiency, and note that the BART Guidelines require that the most stringent level of control be evaluated as one of the BART options. The commenters pointed out several recent Best Available Control Technology (BACT) determinations and regional haze FIPs which required limits of 0.05 lbs/MMBtu or lower on a thirty-day rolling average. They state that no information was presented in the State's NO_X BART evaluation indicating that special circumstances existed which would make the most stringent level of control unachievable.

Response 27: The commenter presented evidence that a limit of 0.05 lbs/MMBtu for SCR likely should have been analyzed in the State's BART determination. We acknowledge that other SCR retrofits have resulted in NO_X emission levels lower than 0.08 lbs/MMBtu, and at a control efficiency greater than 82 percent, the deciview improvement will likely increase and be in a range that many states and EPA have found to be reasonable for NO_X BART controls.

As discussed previously, we have determined that the State's NO_X BART determination was not supported by the record. However, in today's action, we are concluding that the combination of the LNB/OFA controls proposed by the State in combination with the existing Transport Rule FIP, which already applies to Nebraska, satisfies the requirements for NO_X BART at GGS.

Comment 28: Several commenters also stated that the most stringent level of control achievable from the use of combustion controls on GGS Unit 2 needs to be evaluated. They state that Unit 2's existing NO_X emissions (typically between 0.30–0.35 lbs/MMBtu) could likely be controlled well below the proposed joint limit of 0.23 lbs/MMBtu with combustion controls.

Response 28: The current annual rate at GGS Unit 2 has varied between 0.305 and 0.348 from the period 2000–2011. The current rate at Unit 2 already reflects an older vintage of LNB control. Although it is possible that a lower rate could be achieved with new combustion controls, it is unclear what this rate might be and the commenter has not offered documentation as to why a lower rate could be achieved by LNB/OFA on this unit. BART analyses by states and EPA have typically assumed combustion controls to meet a rate of 0.23 lbs/MMBtu for purposes of evaluation of cost and visibility benefit, therefore, EPA sees no reason to conclude that the State's analysis of combustion controls at 0.23 lbs/MMBtu was not reasonable.

Comment 29: We received several comments indicating that SNCR was prematurely eliminated as an option for NO_X BART at GGS. Nebraska eliminated SNCR from consideration as BART on the basis that it is not technically feasible because of high exit temperatures. The commenter cited a similar unit (Boardman power plant operated by Portland General Electric), in which a contractor found an appropriate injection location which would make a 25 percent NO_X reduction feasible, at an approximate cost of $14/kW. The commenter also believes that the two units at GGS are different enough that SNCR should be evaluated for each unit individually, rather than in combination.

Response 29: The BART Guidelines state, "You should document a demonstration of technical infeasibility and should explain, based on physical, chemical, or engineering principles, why technical difficulties would preclude the successful use of the control option on the emissions unit under review." Nebraska's BART analysis presented a demonstration of why SNCR is technically infeasible for control at GGS Units 1 and 2. However, as described previously, we are not able to determine that the State's NO_X BART determination was supported by the record, and thus, EPA is not making a determination on the feasibility of SNCR as BART at GGS. EPA notes that evaluation of SNCR cost and control efficiency is unit-specific, so comments indicating that SNCR was feasible and cost effective at another facility do not necessarily support a determination that SNCR is feasible at GGS.

Comment 30: One commenter stated that the costs for SCR installation were "under documented". The commenter suggested that the cost estimates were missing significant information, such as vendor quotes, and contended that EPA's proposed approval without this information was "arbitrary". The commenter states that if EPA relied on this information in decision making, but failed to include it in the docket, the public's notice and comment rights were violated.

Response 30: EPA did not rely on information that was not in the docket for this rule. We acknowledge that the vendor quotes provided in the docket (appendix 10.6 of the SIP) are redacted copies, omitting the name of the vendor and certain design parameters. However, we believe that adequate information was presented in order for EPA and the public to review the BART cost estimations.

I. Comments Regarding SO_2 BART at Gerald Gentleman Station

Comment 31: One commenter stated that it agreed with EPA's proposed disapproval of the BART determination for SO_2 controls for GGS. The commenter stated that EPA appropriately determined that dry FGD would result in significant visibility improvement at Badlands. The commenter also stated that it agrees with EPA's proposed disapproval of Nebraska's long-term strategy. The

[24] As calculated by the commenters, GGS Unit 1's incremental cost for SCR was $3,399 and Unit 2's incremental was $3,567, for a two-unit average of $3,481.

[25] These figures are rounded to two decimal places. Unit 1's improvement is estimated at 0.238 dv, Unit 2 is 0.225 dv, for a two-unit total of 0.463 dv.

commenter noted that presumptive BART SO_2 controls at GGS were included in the regional modeling that supports the reasonable progress goals for Class I areas in South Dakota, Colorado, Oklahoma, and Missouri that are impacted by GGS. The commenter stated that without SO_2 controls at GGS, these Class I areas are likely not to meet EPA and the States' reasonable progress goals.

Response 31: EPA appreciates the comments in support of today's action. Comments regarding impact on other states RPGs are addressed in section III E of this notice.

Comment 32: Several commenters stated that it is within Nebraska's purview to assign the weight and significance for, and to balance each of the BART statutory factors. One commenter states that the plain language of the CAA provides Nebraska with great discretion to balance the five statutory factors. *See* 42 USC 7491(g)(2) and 77 FR 12770–12774 (citing 40 CFR 51.308(e)(1)(ii)). The commenter states that in making its BART determination for GGS, Nebraska followed the BART Guidelines in evaluating the costs of compliance and non-air quality environmental impacts, including consideration of the extent to which short-term environmental gains were being achieved at the expense of long-term environmental losses and the extent to which there may be an irreversible or irretrievable commitment of resources. Another commenter states that through the BART five-factor analysis, Nebraska eliminated wet and dry FGD as control options for GGS using step 4 (costs of compliance) and, more importantly, the significant non-air quality environmental impacts, including the unique water resource restrictions that exist in Nebraska, the costs of obtaining the water, and the resultant strain on Nebraska's agricultural sector should water reallocations be required. The commenter asserts that EPA bases its proposed disapproval on disagreement over the cost of water without referencing the State's non-air quality determination, the RHR delegates the determination of the non-air quality environmental impacts factor to the State, and the commenter referred EPA to its statements regarding whether the State reasonably considered the relevant factors in its final rule for South Dakota (77 FR 24845, 24853 (April 26, 2012)).

Response 32: EPA incorporates by reference its response to comments 6 and 9. EPA agrees that states are assigned statutory and regulatory authority to determine BART and that many past EPA statements, including those the commenter cited in EPA's approval of South Dakota's regional haze SIP, have confirmed state authority in this regard. However, although the states have the freedom to determine the weight and significance of the statutory factors, they have an overriding obligation to come to a reasoned determination. While states have authority to exercise different choices in determining BART, the determinations must be reasonably supported.

EPA based its decision to disapprove Nebraska's SO_2 BART determination for GGS on a number of issues, including errors in Nebraska's cost analysis for FGD controls, the reasonableness of the costs of controls, the potential for significant visibility improvement as a result of installing FGD or DSI, and improper rejection of DSI. The availability and cost of obtaining water was factored into the cost of controls and the costs were still found to be reasonable, particularly given the significant visibility benefits as a result of controls. Furthermore, as EPA stated in its proposal, DSI does not consume as much water as FGD, and is a viable option for control of SO_2. For those reasons, we found that Nebraska's blanket dismissal of any SO_2 control under the "non-air quality environmental impact" factor was unreasoned.

Comment 33: One commenter questioned EPA's justification for disagreeing with Nebraska's determination that DSI was not reasonable for BART control. The commenter said that Nebraska's reasons for eliminating DSI as BART control were that the technology was relatively new for units the size of GGS Units 1 and 2, and the cost would exceed Nebraska's dollars per deciview threshold (Nebraska estimated $95,189,314/dv/year for DSI, exceeding its threshold of $40 million per deciview per year).

Response 33: At $2,058 per ton, and a visibility improvement of 0.86 dv at the closest Class I area, EPA considers DSI to be cost effective, and the visibility improvements to be significant at the closest Class I area.

Visibility improvement for DSI was only evaluated at Badlands, so we are unable to fully analyze Nebraska's use of the dollars per deciview threshold in this case, as cumulative benefits were not modeled. However, because of the proximity and similarity of impacts between Badlands and Wind Cave, we believe it is reasonable to assume similar visibility improvement would be seen at Wind Cave from the installation of DSI. The annualized cost of DSI at the two units is $81,958,000, and if similar visibility improvements were seen at Wind Cave (0.86), the cost per deciview would be $47,650,000.[26] This approaches Nebraska's threshold for reasonableness on a dollars per deciview basis.[27] If the benefit on the other Class I areas GGS impairs was added in to this calculation, the cost per deciview would likely be at or under Nebraska's threshold.

Nebraska did not present information in its SIP submission showing that DSI is technically infeasible at units the size of GGS as a basis to eliminate it from the consideration for BART, and in fact evaluated DSI as a feasible control.

Comment 34: One commenter stated that our proposed revisions to FGD cost estimates are not correct. In the TSD for our proposed action, we did a detailed evaluation of the cost estimates provided by Nebraska, and noted where we believed costs to be overestimated or inappropriately included. The commenter incorporated by reference two contractors' assessments of our evaluation.

Response 34: The contractors' comments and our responses are described in detail in Appendix G, "Responses to Comments and Revisions to EPA's Evaluation of Cost of FGD Controls at NPPD GGS Units 1 and 2." Overall, after making adjustments to our cost estimates based on these comments, the cost of controls emerge as even more cost effective than our original estimate, as previously shown in Table 1. These revisions do not change our conclusions that Nebraska overestimated the costs of FGD controls. Our revised analysis reduces the estimated cost of controls from $108,535,690 (annualized) to between $66,530,865 and $69,519,846—a 36 to 39 percent reduction in cost.

J. Comments Regarding Water Availability To Operate FGD

Comment 35: Many commenters reiterated statements in the SIP regarding water availability and concerns about the use of water resources to operate air pollution controls. In order to obtain the water necessary to operate FGD, NPPD would need to obtain the rights to groundwater resources in the over-appropriated Twin Platte Basin. In its SIP, under the "non-air environmental impact" factor of the BART analysis for SO_2 control at GGS, Nebraska determined that this consumptive water use rendered the control unreasonable.

Response 35: First, we note that today's action does not require

[26] $81,958,000 / (0.86 × 2) = $47,650,000.

[27] Although EPA notes that Nebraska did not provide justification or basis for its thresholds in the record.

installation of FGD; instead, it relies on the trading program of the Transport Rule, which does not dictate specific controls for specific units, to achieve visibility protection.

EPA acknowledges the concerns about water availability, and recognizes the great care that the State takes to manage limited water resources. We also acknowledge the goals of the Integrated Management Plans (IMP) and obligations of the Platte River Recovery Plan.

However, as we said in our proposal, we do not believe that the water is unattainable, but that it can be obtained at a cost. See response to comment 36 about how these costs were taken into account in estimating the overall cost of controls.

We also note that there are BART control options which do not require nearly the amount of consumptive use of water, such as DSI, which is cost effective and achieves significant visibility improvement. FGD was not the only control option for SO_2 at GGS, so it is not acceptable to use concerns about water availability to rule out all SO_2 controls for BART.

Comment 36: Two commenters state that the cost of acquiring water and land has increased since the time the SIP was submitted. The Nebraska Association of Resources Districts states that land costs in the basin have exceeded $10,000/acre and water rights have been valued up to $5,000 per acre-foot. NDEQ states that since the SIP was submitted in July 2011, land values have increased in the area, such that in March 2012, a farm with 330 acres of irrigated land sold for $4,303 per acre. They estimate that this is a 7.5 percent increase in land value from the cost estimates utilized in the SIP.

Response 36: We recalculated the costs of obtaining water to operate wet and dry FGD based on these comments.

As seen in Table 3, when these higher land costs are considered, it raises the cost effectiveness of wet FGD from $2,932 per ton to $3.245 per ton, an increase of $313 per ton. These figures should be considered to be conservative for several reasons. First, NPPD's estimates of water use to operate wet FGD were 31 percent higher than the average of other facilities that NDEQ provided in its SIP. Second, we did not include any rental income from the property, value due to production of dry land crops, or the future value of the land in 20 years in calculating these costs. Third, as noted in the proposal, although we did not review the BART cost analysis for wet FGD, many of the same cost overestimations are likely present.

For dry FGD, using our adjusted costs and adding in the higher costs of land and water, the costs are still reasonable, ranging from $1,897–$2,107 per ton.

TABLE 3—COST OF OBTAINING WATER RIGHTS TO OPERATE FGD AT GGS

	Wet FGD		Dry FGD		
	Estimation in SIP	Estimation revised from comments	EPA's estimates, plus water		
Acre-feet per year required	3,877	3,877	3,238	3,238	3,238.
Acres of land required	22,000	22,000	[a] 18,374	18,374	18,374.
Cost of land per acre	$4,000	$10,000	$10,000	$10,000	$10,000.
Total cost to obtain water offsets	$88,000,000	$220,000,000	$183,740,005	$183,740,005	$183,740,005.
Annualized costs of obtaining water offsets (7% over 20 years).	$8,306,590	$20,766,444	$17,343,757	$17,343,757	$17,343,757.
Annualized cost of FGD	$108,450,000	$108,450,000	$66,530,865	$67,871,854	$69,519,846.
Total annualized cost, FGD + water offsets	$116,756,590	$129,216,444	$83,874,622	$85,215,611	$86,863,603.
Emission Rate (lbs/MMBtu)	0.15	0.15	0.15	0.11	0.06.
Tons SO_2 reduced	39,815	39,815	39,815	42,473	45,797.
Cost effectiveness ($/ton)	$2,932	$3,245	$2,107	$2,006	$1,897.
Average visibility improvement (Badlands)	0.78	0.78	0.78	unknown	unknown.
Average visibility improvement (Cumulative)	3.17	3.17	3.17		
$/dv (Badlands)	$149,687,936	$165,662,108	$107,531,566		
$/dv (Cumulative)	$36,831,732	$40,762,285	$26,458,871		

[a] Assumes 0.176227 acre feet of water available per acre of land.

Comment 37; One commenter pointed out that our analysis of costs to operate FGD did not include loss of agricultural revenue. The State raised concerns in its SIP about the impact to the Nebraska economy if irrigated cropland were to be changed to less-valuable dry land farming.

Response 37: While we acknowledge that there may be impacts to the economy that go beyond what was included in the BART analysis, we believe that it would be inconsistent to include the regional loss of agricultural revenue in a BART analysis. BART analyses should be done using EPA's Cost Control Manual, or a similar method for standardizing how costs are taken into account. These types of regional economic influences, both positive and negative, are not included in BART analyses as direct costs of installing and operating emission controls. If such impacts were to be

considered, different methodologies and different notions of cost effectiveness would have to be developed. While we are sensitive to broader economic impacts, they are not part of our focused analysis of the BART factors in making a BART determination.

Comment 38: We received comments noting that the water requirements of FGD are typically a very small percentage of the water use requirements for a plant overall, which are largely for cooling, and it is not reasonable to contend that this *de minimis* increase in water use is prohibitive. The commenter also pointed out that GGS uses a "once-through" system, which wastes significant amounts of water. The commenter notes that water saving options that have been employed in other water restricted locations could be employed at GGS to lessen the strain on water resources.

Response 38: In general, we agree with the commenter that there are likely efficiency measures which could be undertaken to reduce water use if FGD were installed.

Comment 39: One commenter states that any EPA-imposed regulation at GGS that would cause a new consumptive use of water in the over-appropriated Platte River Basin would also increase the competition for water to meet the needs of federally listed threatened and endangered species. To that end, the commenter encouraged EPA to re-initiate consultation with the U.S. Fish and Wildlife Service on the water impacts to the listed species as well as the air impacts.

Response 39: The FIP imposed by EPA as a result of today's action does not, in and of itself, cause a new consumptive use of water in the Platte River Basin, therefore, the commenter's initial premise is not correct. Furthermore, the Department of Interior has had input into this BART determination and rulemaking process. The U.S. Fish and Wildlife Service is part of the U.S. Department of the Interior, which is a FLM for Class I areas under the RHR. As such, the RHR requires the State to provide the FLM with an opportunity for consultation at least 60 days prior to any public hearing, including an opportunity for the FLM to discuss their assessment of visibility impairment in any Class I area and to make recommendations on the development of the RPG and implementation of strategies to address visibility impairment. 40 CFR 51.308(i). In its regional haze SIP, Nebraska stated it provided the FLMs a 60-day review period of the draft BART permits and related materials for GGS and NCS beginning July 1, 2008, as well as a 60-day review period for the draft regional haze SIP beginning November 18, 2010. In addition, the FLMs had opportunities to provide comments during Nebraska's public comment period for its regional haze SIP submission, as well as during the public comment period for today's action. During these public comment periods, the Department of the Interior, in its comments, did not, to EPA's knowledge, raise concerns about any impacts to endangered species if controls were required at GGS, and in fact, encouraged EPA to promulgate a source-specific BART FIP requiring SO_2 controls for GGS Units 1 and 2 at 0.06 lb/mmBtu on a 30-day rolling average, which would likely correspond to FGD controls requiring water. EPA also notes that DOI provided input on the national Transport Rule "Better than BART" rulemaking.[28]

K. Comments Regarding the Transport Rule FIP

Comment 40: One commenter made a factual error in their comment letter, stating that, "EPA simultaneously proposed a federal implementation plan ('FIP') requiring installation of flue gas desulfurization ('FGD') technology at GGS to correct what it perceives to be deficiencies in Nebraska's BART determination."

Response 40: The FIP portion of this action does not in fact require FGD controls, but rather relies on the Transport Rule as an alternative for source-specific BART.

Comment 41: One commenter referenced and incorporated its February 28, 2012 comments on EPA's proposal that the Transport Rule is "Better than BART" (Docket ID No. EPA HQ–OAR–2011–0729) and its March 22, 2012 comments on EPA's Direct Final Rule related to state emissions budgets under the CSAPR (Docket ID No. EPA–HQ–2009–0941). This commenter also incorporated by reference the February 28, 2012, comments made by Earthjustice on EPA's proposal that the CSAPR is "Better than BART" (Docket ID No. EPA HQ–OAR–2011–0729). The commenter stated that it is incorporating these comments by reference because these actions are "inherently related" to this action.

Response 41: In today's rule, EPA is taking final action on the partial approval and partial disapproval of Nebraska's regional haze SIP. EPA is also taking final action on a FIP relying on the Transport Rule to satisfy BART for SO_2 at one source to address deficiencies in the State's plan. EPA made the proposed findings referenced by the commenter in separate actions and the commenter is merely reiterating and incorporating by reference its comments on those separate actions. These comments are therefore beyond the scope of this rulemaking and are or will be addressed in those separate actions.

Comment 42: Two commenters point out that EPA cannot rely on the Transport Rule "Better than BART" finding to meet its BART FIP obligation for GGS because the Transport Rule is not currently in effect and its fate is uncertain. 77 FR 33642 (June 7, 2012). The D.C. Circuit stayed the Transport Rule on December 30, 2011, pending review on the merits of several consolidated petitions for review of the rule. *EME Homer City Generation, L.P.* v. *EPA*, No. 11–1302 (D.C. Cir. Dec. 30, 2011). As a result of the stay, the Transport Rule currently has no legal effect and is not a binding legal requirement on states and covered sources. EPA cannot rely on its Transport Rule to meet BART or any other requirement until the stay is lifted. Furthermore, a commenter points out that the Court is reviewing several petitions from states and the industry, and the outcome of the Court's review is uncertain.

Response 42: EPA disagrees that we cannot rely on the Transport Rule because of the stay imposed by the DC Circuit. EPA bases this conclusion on the long-term focus of our analysis underlying today's action.

While the Transport Rule is not currently enforceable, the air quality modeling analysis underlying EPA's determination that the Transport Rule will provide for greater reasonable progress than BART is based on a forward-looking projection of emissions in 2014. However, any year up until 2018 (the end of the first regional haze planning period) would have been an acceptable basis for comparing the two programs under the Regional Haze Rule. *See* 40 CFR 51.308(e)(2)(iii). We anticipate the requirements addressing all significant contribution and interference with maintenance identified in the Transport Rule will be implemented prior to 2018.

We do not agree with the comment that because the Transport Rule is subject to review by the DC Circuit, EPA cannot move forward with reliance on EPA's determination that it provides for greater reasonable progress than BART. EPA does not view the stay imposed by the DC Circuit pending review of the underlying rule as undermining EPA's conclusion that the Transport Rule will have a greater overall positive impact on

[28] 77 FR 33642 (June 7, 2012).

visibility than BART both during the period of the first long-term strategy for regional haze and going forward into the future. EPA recognizes, as the commenter suggests, that EPA may be obliged to revisit the Nebraska regional haze SIP and FIP if the rule is not upheld, or if it is remanded and subsequently revised. However, EPA does not consider it appropriate to await the outcome of the DC Circuit's decision on the Transport Rule before moving forward with the regional haze program as EPA believes the Transport Rule has a strong legal basis, and a judicial decree requires the EPA to meet its statutory obligations to have a FIP or an approved SIP meeting the Regional Haze Rule requirements in place by June 15, 2012.[29]

Comment 43: Two commenters state that given EPA's disapproval of Nebraska's SO_2 BART determination for GGS, EPA must promulgate a source-specific BART FIP with SO_2 limits reflective of the addition of FGD controls at GGS. One commenter contends that due to the issuance of a finding that Nebraska failed to submit its regional haze SIP in a timely manner, EPA is obligated to either promulgate full approval of Nebraska's regional haze SIP or promulgate a FIP. The commenters state that EPA cannot propose to disapprove Nebraska's SO_2 BART determination for GGS without concurrently proposing a FIP. One commenter stated that the GGS Units could meet much lower SO_2 emission rates than 0.10 lbs/MMBtu analyzed by Nebraska with installation of new FGD systems, either wet or dry. They restated our conclusion that FGD at GGS with could achieve 0.06 lb/MMBtu,[30] a 90 percent control efficiency. The commenters point out the significant visibility improvements available from this level of control, greater than the improvement modeled by Nebraska. (Nebraska modeled rates of 0.15 lbs/MMBtu and 0.10 lbs/MMBtu, but no more stringent controls). The commenter argues that EPA's proposed FIP relying on the Transport Rule as an alternative to BART is legally and technically unjustified; installation of FGD systems at a rate of 0.06 to 0.15 lbs/MMBtu is cost effective and results in significant visibility improvement; and it is arbitrary, capricious and unreasonable for EPA to require otherwise. In addition, the commenter believes additional controls are routinely being required in the application and implementation of regional haze in other states and for other sources throughout the country.[31] Both commenters contend that EPA should instead promulgate a source-specific BART FIP requiring SO_2 controls for GGS Units 1 and 2 at a limit of 0.06 lbs/MMBtu on a 30-day rolling average.

Response 43: EPA agrees with the commenter that in the absence of an approvable BART determination for SO_2 for GGS, EPA is obligated to promulgate a FIP to satisfy the CAA requirements under section 110(c)(1), but EPA disagrees that this necessarily requires a source-specific SO_2 BART FIP for GGS. At the point EPA becomes obligated to promulgate a FIP, EPA steps into the State's shoes, and must meet the same requirements, has flexibility to make technical judgments within the bounds of the rule, and, as discussed previously in this notice, is not statutorily obligated to impose source-specific controls. The regional haze rule provides certain flexibilities to the state (and to EPA, in the case of a FIP) to determine appropriate BART. Rather than requiring source-specific BART controls, EPA has the flexibility pursuant to 40 CFR 51.308(e)(3) to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. EPA recently finalized its rule determining that the trading programs in the Transport Rule, achieve greater reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas than source-specific BART. 77 FR 33642 (June 7, 2012). While EPA opted to promulgate source-specific SO_2 FIPs in other states, such as in Oklahoma and New Mexico to address deficiencies in BART determinations, in its June 7, 2012 rulemaking, EPA also promulgated FIPs for other states relying on CSAPR to remedy deficiencies in BART determinations. See also EPA's response to comments 3, 6, and 8, which are incorporated by reference.

Comment 44: Two commenters urged EPA to require specific SO_2 controls on GGS as a geographic enhancement under EPA's proposed rulemaking revising the RHR to allow the trading programs in the Transport Rule as an alternative program to BART.[32] One commenter suggests that this may be done by proposing a geographic enhancement to the Transport Rule as a FIP as part of the action on the Nebraska regional haze plan, or by proposing a supplement to the Transport Rule to require lower emission limits for Nebraska as a geographic enhancement, or by removing Nebraska from the finding that the Transport Rule is better than BART.

Response 44: The primary purpose of EPA's existing regulatory language regarding geographic enhancements, at 40 CFR 51.308(e)(4), is to allow a market-based system to accommodate actions taken under the RAVI provisions. No RAVI finding has been certified that would apply to GGS. A state may always choose to include in their SIPs provisions applicable to a specific source even if RAVI is not triggered. In today's action, EPA is finalizing its partial FIP relying on the Transport Rule as an alternative to SO_2 BART for GGS, and choosing not to pursue any geographic enhancements. This is based on EPA's separate rule finding that the trading programs of the Transport Rule meet the Regional Haze Rule's requirement that the average difference in visibility improvement at all Class I areas be greater under the alternative program. Therefore, EPA has met the minimum requirements for SO_2 BART for GGS by relying on the Transport Rule. The commenters' suggestions that EPA should propose a supplement to the Transport Rule to require lower emission limits for Nebraska as a geographic enhancement, or remove Nebraska from the finding that the Transport Rule is better than BART are beyond the scope of today's action.

Comment 45: EPA received many comments regarding EPA's rule allowing the trading programs in the Transport Rule as an alternative to BART. Several commenters strongly disagreed that EPA's rulemaking (Docket ID No. EPA–HQ–OAR–2011–0729) revising the Regional Haze Rule to allow the trading programs in the Transport Rule as an alternative program to BART provides greater visibility improvement than source-specific BART at GGS. Commenters pointed out what they contend to be errors in EPA's IPM modeling assumptions for GGS emission rates for the 2014 base case and 2014 CSAPR scenarios; omission of GGS Unit 2 emissions and under predicted impacts at Mingo Wilderness Area from the IPM modeling; reliance on outdated, lower

[29] *National Parks Conservation Association, et al. v. Lisa Jackson*, Civil Action No. 1:11-cv-01548 (ABJ) (D.D.C. March 30, 2012).

[30] 42 FR 12780 (March 2, 2012).

[31] The commenter cites as examples, the final FIPs for the San Juan Generating Station in New Mexico (76 FR 52388) and Oklahoma (76 FR 81727) and the proposed FIP for North Dakota (76 FR 58570).

[32] See 76 FR 82224, footnote 13, which describes how states may also include in their SIPs provisions applicable to a specific source even if no FLM agency has made such a reasonable attribution.

Transport Rule emission budgets for several states without remodeling to account for the revised, higher emission budgets;[33] and negative effects on the ability of each state's Class I areas to make reasonable progress towards the national visibility goal of achieving natural background conditions by 2064. One commenter provides that the language of the CAA at section 169A(b)(2)(A) and (c) requires source-specific BART emission limits and EPA may only exempt a source from BART based on certain demonstrations that the source does not cause or contribute to significant impairment of visibility, after sufficient notice and comment rulemaking and concurrence by the appropriate FLM. Commenters requested that EPA remove Nebraska from the determination that the BART alternative is better than source-specific BART controls in Nebraska.

Response 45: In today's rule, EPA is taking final action on the partial approval and partial disapproval of Nebraska's regional haze SIP and the FIP relying on the Transport Rule to satisfy BART for SO_2 at one source to address the approvability issues. The rule referenced by the commenter is a separate action and these and similar comments were made in the context of that separate action. These comments are therefore beyond the scope of this rulemaking. These comments, and those similar to it, on the Transport Rule "Better than BART" rulemaking have been addressed, as appropriate, by EPA in its final action on the December 30, 2011, proposed rule. 77 FR 33642 (June 7, 2012). See also EPA's response to comment 6, which is incorporated by reference.

Comment 46: A commenter noted that the Transport Rule will not require additional SO_2 controls for EGUs in Nebraska, and questioned the validity of an approach that appears to conclude that no SO_2 reductions is better than a BART reduction of over 28,000 tons per year. The commenter contends that by averaging across all Class I areas, EPA is allowing states like Nebraska to benefit from controls in other states and to install less controls under the Transport Rule than would be required by source specific BART.

Response 46: EPA disagrees with the commenter's characterization of EPA's conclusions related to the Transport Rule "Better than BART" rulemaking. EPA refers the commenter to EPA's final action on the December 30, 2011, proposed rule, 77 FR 33642 (June 7, 2012), where EPA demonstrated that, on average, the Transport Rule results in greater average visibility improvement at affected Class I areas compared to application of BART nationwide.

L. Comments Regarding BART at Nebraska City Station

Comment 47: One commenter stated that they believe that similar issues with regard to estimated cost of controls likely persisted throughout the cost estimations for BART at Nebraska City Station, and encouraged EPA to revisit these analyses.

Response 47: The commenter's statements did not contain any detail or evidence to indicate that we must find the State's evaluation flawed and re-open it to conduct our own independent analysis.

Furthermore, our approval of the NO_X and SO_2 BART determination at Nebraska City Station rests on the State's determination that the minimal visibility improvement available did not warrant the costs of the next level of controls. For NO_X, Nebraska concluded that based on the high incremental cost of $8,203[34] per ton for the low incremental visibility improvement of 0.11 dv at Hercules Glades, requiring SCR was not warranted. BART for NO_X at OPPD NCS Unit 1 was determined to be the installation of LNB/OFA with an emission limitation of 0.23 lbs/MMBtu.

Similarly, for SO_2, Nebraska concludes that the cost of installing FGD ($1,636 per ton)[35] is not warranted considering the amount of visibility improvement (0.44 dv maximum improvement at Hercules Glades), and therefore proposes no SO_2 controls as BART for NCS Unit 1. EPA notes that the closest Class I areas to this Unit are 500 km away or greater.[36] NCS Unit 1's baseline impact is 0.65 dv at Hercules Glades, and 0.46 dv at Wichita Mountains, for a cumulative baseline impact of 1.11 dv.[37] The potential improvement from installing FGD at the presumptive rate of 0.15 lbs/MMBtu is 0.25 dv on average at Hercules Glades, and 0.23 dv on average at Wichita Mountains, for a cumulative improvement of 0.48 dv. With an annualized cost of $34,720,000, this makes the dollar per deciview for presumptive SO_2 control at NCS $72,333,333, which is well over the State's threshold of $40 million/deciview.

M. Comments Regarding Interstate Transport

Comment 48: One commenter stated that EPA failed to ensure that the Nebraska regional haze SIP will not interfere with interstate transport visibility requirements. The commenter cites to section 110(a)(2)(D)(i) of the CAA which requires states to submit new SIPs that provide for the implementation, maintenance, and enforcement of a new or revised standard within three years after promulgation of such standard, and specifically to section 110(a)(2)(D)(i), which applies to interstate transport of emissions. This "interstate transport" prong requires that SIPs be adopted to prohibit any source from emitting pollution which will "(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility." The commenter points out that EPA issued a finding that Nebraska failed to submit an interstate transport SIP to address the 1997 ozone and particulate matter NAAQS, after which Nebraska submitted an interstate transport SIP submittal, and EPA approved it, stating, "At this time, it is not possible for NDEQ to accurately determine whether there is interference with measures in another state's SIP designed to protect visibility, which is the fourth element that was addressed. Technical projects relating to visibility degradation are under development. Nebraska will be in a more advantageous position to address the visibility projection requirements once the initial regional haze SIP has been developed." 72 FR 71246 (Dec. 17, 2007). The commenter states that in its approval of the transport visibility prong, EPA's reliance on the regional haze SIP and caveat that in a vacuum the interstate transport requirements may be insufficient to ensure adequate visibility protection, necessitates analysis of the regional haze plan in conjunction with interstate transport requirements.

Response 48: As the commenter notes, on April 25, 2005, EPA published a

[33] *See* 77 FR 10324 (Feb. 21, 2012) and 77 FR 10342 (Feb. 21, 2012).

[34] ($38,210,000 − $1,690,000)/(14,633 − 10,181) = $8,203.

[35] Cost per ton is $1,636 at the limit of 0.10 lbs/MMBtu.

[36] Distance from Nebraska City Station to Hercules Glades is 498 km; to Mingo is 630 km; and to Wichita Mountains is 695 km.

[37] As shown in the TSD, these calculations are based on a three-year average, 2001–2003. Maximum baseline impact at Hercules Glades was 0.933 dv in 2001, and 0.686 dv at Wichita Mountains in 2003. These are the only two Class I areas which were impacted more than 0.5 dv as shown by the CALPUFF modeling for the baseline period.

"Finding of Failure to Submit SIPs for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and $PM_{2.5}$" 70 FR 21147. This included a finding that Nebraska and other states had failed to submit SIPs to address interstate transport of emissions affecting visibility and started a 2-year clock for the promulgation of FIPs by EPA, unless the states made submissions to meet the requirements of section 110(a)(2)(D)(i) and EPA approved such submissions. *Id.*

On August 15, 2006, EPA issued guidance on this topic entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance). We developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) of the CAA require each state to have a SIP that prohibits emissions that adversely affect other states in ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states. With respect to establishing that emissions from sources in the State would not interfere with measures in other states to protect visibility—which is the subject of this particular comment—the 2006 Guidance recommended that states make a submission indicating that it was premature, at that time, to determine whether there would be any interference with measures in the applicable SIP for another state designed to "protect visibility" until the submission and approval of regional haze SIPs.

On December 17, 2007, EPA approved Nebraska's SIP revisions for addressing the "good neighbor" provisions of the CAA in a direct final rulemaking. 72 FR 71245. EPA did not receive any comments on the 2007 SIP action. In today's action, EPA is not re-opening the 2007 approval of Nebraska's SIP as it relates to the CAA section 110(a)(2)(D)(i). Today's action also does not serve as an approval or disapproval of any of Nebraska's section 110(a) infrastructure SIP submittals as they pertain to any NAAQS; those actions are not relevant to today's action and will be addressed in separate rulemakings as appropriate.

Even if the visibility prong of section 110(a)(2)(D)(i), as it relates to the 1997 NAAQS and EPA's 2007 approval action, were relevant to this rulemaking, the requirements of the Act and the regional haze rule are satisfied by an approved SIP, a promulgated FIP, or a combination of a SIP and FIP. The control measures approved and promulgated for Nebraska in today's action will serve to prevent sources in Nebraska from emitting pollutants in amounts that will interfere with efforts to protect visibility in other states and thus satisfy the "interference with visibility protection" sub-element of CAA section 110(a)(2)(D)(i)(II).[38]

N. Technical Corrections

Comment 49: OPPD pointed out an error in the Nebraska City Unit 1 p.m. potential to emit in Table 1 of our proposal, "Facilities with BART-Eligible Units in Nebraska." OPPD stated that the listed potential to emit for PM (43,792 tons per year) is too high, and estimated it to be 3,415 tons per year.

Response 49: Table 1 is a listing of the units in Nebraska which are BART-eligible based on source category, date, and emissions. The 43,792 figure came from Appendix 10.1 of the SIP. In response to this comment, we checked with the State, who confirmed that the figure was too high, and estimated the potential to emit to be 2,968 tons per year.[39] Changing this figure does not change the determination that Unit 1 at Nebraska City Station is BART-subject.

Comment 50: NPS commented that Table 5 of the Technical Support Document, "BART subject facilities in Nebraska," contained a numerical error. Impacts should read less than 0.5 dv rather than less than 0.05 dv.

Response 50: The table is corrected to read as follows:

TABLE 5—BART-SUBJECT FACILITIES IN NEBRASKA

Facility	Units	Class I area	CALPUFF modeled impacts > 0.5 dv		
			2001	2002	2003
OPPD Nebraska City Station	1	Hercules Glades	0.933	0.556	< 0.5
		Wichita Mountains	< 0.5	< 0.5	0.686
NPPD Gerald Gentleman Station	1 & 2	Badlands	2.845	2.828	3.121
		Wind Cave	2.452	2.591	2.127
		Wichita Mountains	1.032	1.206	1.392
		Rocky Mountain	1.136	1.246	1.053
		Hercules Glades	0.826	0.616	0.594

IV. Regulatory Text

EPA proposed a FIP relying on the Transport Rule as an alternative to BART for SO_2 emissions from GGS. Accordingly, EPA proposed to revise 40 CFR Part 52, Subpart CC to reflect EPA's proposed determination that the requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 from NPPD, GGS Units 1 and 2 will be met by 40 CFR 52.1429, the Transport Rule FIP requirements for SO_2 emissions in Nebraska. In today's action, EPA made minor clarifying changes to the FIP language in 40 CFR 52.1435 to better set forth the scope and applicability of EPA's disapproval and FIP.

[38] Although the SIP is deficient as described elsewhere in today's action, the partial FIP addresses those deficiencies, and no further action is needed to address the visibility requirements. However, Nebraska may revise its SIP and submit the revision to us, to address the requirements covered by the FIP. Should such a revision meet CAA requirements, we would replace our FIP with Nebraska's SIP revision. We encourage the State to revise its SIP to address these requirements.

[39] Email from Shelley Schneider, NDEQ to Chrissy Wolfersberger, EPA, dated May 17, 2012.

V. Statutory and Executive Order Requirements

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action will apply to one facility and is therefore not a rule of general applicability. In addition, this rule does not impose new mandates, because EGUs in Nebraska are subject to the requirements of the Transport Rule independently of this action. Therefore, this action is not a "significant regulatory action." This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final action on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. The FIP for the NPPD Units being finalized today does not impose any new requirements on small entities. The partial approval of the SIP merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985). Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more, adjusted for inflation, for state, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule contains regulatory requirements that apply to two units at one coal-fired power plant in Nebraska.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely addresses the state not fully meeting its obligation to adopt a SIP that meets the regional haze requirements under the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comments on the proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications, as specified in Executive Order 13175, because the action EPA is taking neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule does not impose any new mandates, because EGUs in Nebraska are subject to the requirements of the Transport Rule independently of this action. See 77 FR 33642, for an analysis of the implications of Executive Order 12898 in relation to EPA's final rule, "Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans" (June 7, 2012). The partial approval of the SIP merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

K. Congressional Review Act

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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2012. Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d) as it promulgates a FIP under CAA section 110(c).

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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protections, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: June 15, 2012.

Lisa P. Jackson,

Administrator.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. § 52.1420 is amended by:

■ a. Revising the heading for paragraph (d) and the heading for the table in paragraph (d);

■ b. In paragraph (d), adding entries (3) and (4) to the table in numerical order; and

■ c. In paragraph (e), adding entry (25) to the table in numerical order to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(d) EPA-approved state source-specific requirements.

EPA-APPROVED NEBRASKA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
* * *	*	*	*	* *
(3) Nebraska Public Power District, Gerald Gentleman Station.	CP07–0050	5/11/10	7/6/2012, [Insert FEDERAL REGISTER citation].	EPA has only approved the elements of the permit pertaining to NO_X requirements.
(4) Omaha Public Power District, Nebraska City Station.	CP07–0049	2/26/09	7/6/2012, [Insert FEDERAL REGISTER citation].	

(e) * * *

EPA–APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * *	*	*	* *	* *
(25) Regional haze plan for the first implementation period.	Statewide	6/30/11	7/6/2012, [Insert FEDERAL REGISTER citation].	The plan was approved except for that portion pertaining to SO_2 BART for Nebraska Public Power District, Gerald Gentleman Units 1 and 2, and the portion of the long- term strategy addressing the SO_2 BART measures for these Units.

■ 3. Section 52.1437 is added to read as follows:

§ 52.1437 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Nebraska on July 13, 2011, does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of SO_2 from Nebraska Public Power District, Gerald Gentleman Station, Units 1 and 2. EPA has disapproved the provisions of the July 13, 2011 SIP pertaining to the SO_2 BART determination for this facility, including those provisions of the long-term strategy addressing the SO_2 BART measures for these units.

(b) *Measures Addressing Partial Disapproval Associated with SO_2.* The deficiencies associated with the SO_2 BART determination for Nebraska Public Power District, Gerald Gentleman Station, Units 1 and 2 identified in EPA's partial disapproval of the regional haze plan submitted by Nebraska on July 13, 2011, are satisfied by § 52.1429.

[FR Doc. 2012–15192 Filed 7–5–12; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Two Foreign Macaw Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2011–0101; 450 003 0115]

RIN 1018–AY33

Endangered and Threatened Wildlife and Plants; Two Foreign Macaw Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list as endangered the military macaw (*Ara militaris*) and the great green macaw (*Ara ambiguus*) under the Endangered Species Act of 1973, as amended (ESA). We are taking this action in response to a petition to list these parrot species as endangered or threatened under the ESA. This document also serves as the completion of the status review and as the 12-month finding. We seek information from the public on the proposed listing for these species.

DATES: We will consider comments and information received or postmarked on or before September 4, 2012.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–ES–2011–0101.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–ES–2011–0101; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept comments by email or fax. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, 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

I. Purpose of the Regulatory Action

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting that we list 14 parrot species under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). As part of a court-approved settlement agreement, the Service agreed to submit a determination as to whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for the military macaw (*Ara militaris*) and the great green macaw (*Ara ambiguus*)) to the **Federal Register** by June 30, 2012. This action complies in part with this settlement agreement and is authorized by the ESA.

II. Summary of the Major Provisions of the Regulatory Action in Question

We are proposing to list as endangered the military macaw (*Ara militaris*) and the great green macaw (*Ara ambiguus*). We are proposing this action primarily because of the effects of habitat loss, fragmentation, and degradation; small and declining population size; poaching; and regulatory mechanisms that are inadequate to ameliorate these threats on these birds throughout their ranges.

III. Costs and Benefits

Section 4(b)(1)(A) of the ESA 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." Further, this action is not a "significant" regulatory action under Executive Order 12866. Therefore, we have not analyzed its costs or benefits.

Background

Section 4(b)(3)(B) of the ESA (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal List of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition ("12-month finding"). In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the ESA requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

In this document, we announce that listing these two species as endangered is warranted, and we are issuing a proposed rule to add these two species as endangered to the Federal List of Endangered and Threatened Wildlife. Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive on the proposed rules. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses of commenters, will become part of the administrative record.

Previous Federal Actions

Petition History

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting that we list 14 parrot species under the ESA. The petition clearly identified itself as a petition and included the requisite information required by the Code of Federal Regulations (50 CFR 424.14(a)). On July 14, 2009 (74 FR 33957), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information indicating that listing may be warranted for 12 of the 14 parrot species. In our 90-day finding on this petition, we announced the initiation of a status review to list as endangered or threatened under the ESA the following 12 parrot species:

(1) Blue-headed macaw (*Primolius couloni*),

(2) Crimson shining parrot (*Prosopeia splendens*),

(3) Great green macaw (*Ara ambiguus*),

(4) Grey-cheeked parakeet (*Brotogeris pyrrhoptera*),

(5) Hyacinth macaw (*Anodorhynchus hyacinthinus*),

(6) Military macaw (*Ara militaris*),

(7) Philippine cockatoo (*Cacatua haematuropygia*),

(8) Red-crowned parrot (*Amazona viridigenalis*),

(9) Scarlet macaw (*Ara macao*),

(10) White cockatoo (*Cacatua alba*),

(11) Yellow-billed parrot (*Amazona collaria*), and

(12) Yellow-crested cockatoo (*Cacatua sulphurea*).

We initiated the status review to determine if listing each of the 12 species is warranted, and initiated a 60-day public comment period to allow all interested parties an opportunity to provide information on the status of these 12 species of parrots. The public comment period closed on September 14, 2009.

On October 24, 2009, and December 2, 2009, the Service received a 60-day notice of intent to sue from Friends of Animals and Wild Earth Guardians for failure to issue 12-month findings on the petition. On March 2, 2010, Friends of Animals and Wild Earth Guardians filed suit against the Service for failure to make timely 12-month findings within the statutory deadline of the Act on the petition to list the 14 species (*Friends of Animals, et al.* v. *Salazar*, Case No. 10–CV–00357 (D.D.C.)). Pursuant to a court-ordered settlement agreement entered in this case, the Service agreed to specific time frames for submitting to the **Federal Register** a determination as to whether the petitioned action is warranted, not warranted, or precluded by other listing actions. In compliance with the settlement agreement, we published status reviews for the crimson shining parrot (*Prosopeia splendens*), yellow-crested cockatoo (*Cacatua sulphurea*), white cockatoo (*Cacatua alba*), and Philippine cockatoo (*Cacatua haematuropygia*) on August 9, 2011 (76 FR 49202); the red-crowned parrot (*Amazona viridigenalis*) on October 6, 2011 (76 FR 62016); the yellow-billed parrot (*Amazona collaria*) on October 11, 2011 (76 FR 62740); and the blue-headed macaw (*Primolius couloni*) and grey-cheeked parakeet (*Brotogeris pyrrhoptera*) on October 12, 2011 (76 FR 63480).

For the remaining four species that are the subject of this settlement agreement (the military macaw, the great green macaw, the scarlet macaw, and the hyacinth macaw), the Service agreed to submit 12-month findings on the petitioned action to the **Federal Register** by June 30, 2012. This **Federal Register** document complies with the settlement agreement with respect to the military macaw and great green macaw. We will announce the 12-month findings for the remaining two parrot species for which a 90-day finding was made on July 14, 2009 (74 FR 33957) in subsequent **Federal Register** notices.

Information Requested

We intend that any final actions resulting from this proposed rule will be based on the best scientific and commercial data available. Therefore, we request comments or information from other governmental agencies, the scientific community, or any other interested parties concerning this proposed rule. We particularly seek clarifying information concerning:

(1) Information on taxonomy, distribution, habitat selection (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) of these species.

(2) Information on the effects of habitat loss and changing land uses on the distribution and abundance of these species.

(3) Information on the effects of other potential threat factors, including live capture and hunting, domestic and international trade, predation by other animals, and any diseases that are known to affect these species.

(4) Information on management programs for parrot conservation, including mitigation measures related to conservation programs, and any other private, nongovernmental, or governmental conservation programs that benefit these species.

(5) The potential effects of climate change on these species and their habitats.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. 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. Section 4(b)(1)(A) of the ESA 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."

Public Hearing

At this time, we do not have a public hearing scheduled for this proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in the **ADDRESSES** section. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by August 20, 2012.

Species Information for the Military Macaw

Taxonomy

The military macaw (*Ara militaris*, Linnaeus 1766) is in the Psittacidae family and is also known as "guacamaya verde," "parava," and "ravine parrot." Three subspecies of military macaw have been proposed and are recognized by some: *Ara militaris bolivianus* (Reichenow 1908), *Ara militaris mexicanus* (Ridgway 1915), and *Ara militaris militaris* (Linnaeus 1766). Avibase, a database of all birds of the world maintained by Bird Studies Canada, and the Integrated Taxonomic Information System (ITIS) both recognize these subspecies (*http://www.itis.gov* and *http://avibase.bsc-eoc.org/avibase.jsp*, accessed August 30, 2011). The range of *A. m. bolivianus* is thought to be in Bolivia and Argentina. The range of *A. m. mexicanus* is thought to be restricted to Mexico. However, the taxonomic status of *Ara militaris* remains unclear.

Because it is a strong flyer (it has been observed traveling up to 20 kilometers (km) (12 miles [mi]) per day) and it is a semi-migratory species, the physical similarities suggest that seemingly isolated populations may be in contact (Juniper and Parr 1998, p. 423), and therefore their populations may be connected genetically.

For the purpose of this rule, all populations or subspecies of this species essentially face similar threats or threats of similar magnitude, are all generally in the same region, and all have quite small populations, generally fewer than 100 individuals. Absent peer-reviewed information to the contrary and based on the best available information, we recognize all populations of military macaws as a single species. For the purpose of this proposed rule, we are proposing to list the military macaw, including all subspecies, as endangered.

Species Description

The military macaw is an extremely vocal species; it is described as being very noisy and is known to shriek (Birdlife International (BLI) 2011, p. 1). It is a large macaw (70 centimeters or 27.5 inches in length) and is quite vibrant in color. It has dark lime-green feathers mixed with blue flight feathers that are olive-colored underneath. Its forehead is red, and it has a bare white facial area and a black bill. Its lower back is blue; its tail is red and blue. The farthest south population, in Bolivia,

which extends into Argentina, exhibits reddish brown on their throats and cheeks (Juniper and Parr 1998, p. 423). This species is often confused with the great green macaw. The great green macaw (*Ara ambiguus*) is very similar in appearance to the military macaw, but the military macaw has more prominent blue tinge on its hind neck, is smaller, and has darker plumage. These two species are separated geographically.

Habitat and Life History

Military macaws nest both in tree cavities and cliffs. Parrots that nest in cavities in cliff walls such as the military macaw (Bonilla-Ruz *et al.* 2007, p. 730) also nest colonially (in groups). Cliff cavities in ravines used by this species have been documented 25 and 30 meters (m) (82 to 98 feet (ft)) above ground (Arcos-Torres and Solano-Ugalde 2008, p. 70). Tree cavities used by this species have been observed to be 18 m (60 ft) above ground and 75 cm (29.5 inches) deep (Baker 1958, p. 98). This species has also been observed to use secondary cavities, such as abandoned woodpecker holes, particularly in dead pine trees (Strewe and Navarro 2004, p. 50). They alternate nesting and foraging areas based on food availability (Bonilla-Ruz undated, p. 1). Nesting appears to be synchronous with the peak fruiting season, which occurs during April and May (Huatatoca pers. comm. in Arcos-Torres and Solano-Ugalde 2008, p. 70). The military macaw is a social species that congregates in small flocks and is often observed in mated pairs. Its clutch size is usually two to three eggs. They begin to reproduce between 3 and 4 years of age (Mexican National Commission for Protected Areas [CONANP] 2006 in Bonilla-Ruz undated, p. 2). Aggregated nesting is believed to be due to the lack of suitable disbursed nest sites, which may also explain why they are concentrated in certain sites (Salinas-Melgoza *et al.* 2009, p. 306).

This species prefers the lower montane wet forests of the Andes. It inhabits remaining fragmented forested area in the Neotropics. However, in the northernmost part of its range, in Mexico, it is associated with seasonally dry, semi-deciduous tropical forest, deciduous tropical forest, and slopes of pine-oak forest (Bonilla-Ruz 2006, p. 45; Rivera-Ortiz *et al.* 2006, p. 26).

The military macaw is a seasonal migrant, based on food and nutrient availability. In some areas, it has been observed using clay licks to obtain sodium and possibly other minerals, which is a common activity in some parrot species (Lee 2010, p. 58). Its diet varies seasonally. It has been observed feeding on several plant species. Some of the plant species it was observed feeding on include: *Brosimum alicastrum* (Maya nut, ramón), *Bunchosia montana* (no common name (ncn)), *Bursera aptera* (ncn), *Bursera schlechtendalii* (ncn), *Celtis caudate* (ncn), Cedrela species (cedar fruits), *Cyrtocarpa procera* (Chupandilla), *Ficus* species (figs), *Hura crepitans* (ochoo, arbol del diablo, acacu, monkey's dinner-bell, habillo, ceiba de leche, sand-box tree, possum wood, dynamite tree, ceiba blanca, assacu, posentri), *Hura polyandra* (arbol del diablo, haba, jabillo, tetereta), *Melia azedarach* (Chinaberry tree), *Neobuxbaumia tetetzo*, (cardon, higos de teteche, tetetzo), *Orbignea guacoyula* (a type of palm), *Plumeria rubra* (Frangipani), *Tecoma stans* (yellow trumpetbush), *Tillandsia makoyana* (ncn), and *Tillandsia grandis* (ncn) (Hueilega 2011, p. 9; Moschione 2007, in Navarro *et al.*, 2008, p. 2; Contreras-González *et al.* 2006, p. 387; Renton 2004, p. 12; Juniper and Parr 1998, p. 422). Seeds were found to be 39 percent of this species' diet. They have also been observed feeding on bromeliad stems (species unknown) and cacti (species unknown). In Mexico, in the northern part of its range, military macaws have been observed in desert habitat, although they tend to have lower reproductive success in this habitat type (Rivera-Ortiz *et al.* 2008, p. 261). In desert habitat, which is suboptimal, it has been observed consuming edible flowers (species unidentified). Despite the low seasonal abundance of food, deserts offer some refuge from poaching due to the inhospitable dry climate, which can act as a deterrent to poachers (Rivera-Ortiz *et al.* 2008, p. 261).

Range, Observations, and Population Estimates

The military macaw is distributed in highly fragmented, small populations in Mexico and South America. Its range extends from northern Mexico southward into Ecuador, Peru, Colombia, Venezuela, Bolivia, and the southern tip of Argentina (see Figure 1 or *http://www.birdlife.org/* for an approximation of its range and distribution). The species has been described as patchily distributed throughout the eastern foothills of the Andes Mountains (Snyder *et al.* 2000, p. 125). It occurs in altitudes up to 1,600 m (5,249 ft) (Strewe and Navarro 2004, p. 50; Strewe and Navarro 2003, p. 33; Snyder *et al.* 2000, chapter 7, pp. 102, 124–125). Although it has a large distribution (276,000 km^2 (106,564 mi^2)), its populations are localized. Most populations are now estimated to have fewer than 100 individuals (Renton 2004, pp. 12–14). However, in 2004, one population in Colombia was estimated to be 156 individuals (Flórez and Sierra 2004, p. 3). This species may have occurred in Guatemala in the past, but it is no longer found there (Gardner 1972 in Snyder *et al.* 2000, p. 125). Overall, its populations are fragmented and becoming more isolated (Rivera-Ortiz 2008, p. 256).

Figure 1. Distribution of Ara militaris. *Courtesy of BirdLife International (2011).*

The species inhabits tropical semi-deciduous forests along the Pacific and Atlantic slopes through Central and South America. The best available information indicates there are reasonably healthy but small populations in El Cielo and Sierra Gorda Biosphere Reserves in Mexico, Madidi and Amboró National Parks, Pilón Lajas Biosphere Reserve and Apolobamba National Integrated Management Area in Bolivia, and Manu Biosphere Reserve and Bahuaja Sonene National Park in Peru, and a small but stable remnant population in Tehuacan-Cuicatlan Biosphere Reserve, Oaxaca, Mexico (Hosner *et al.* 2009, p. 222; Arizmendi 2008, p. 3; Rivera-Ortiz 2008, p. 256; Renton 2004, p. 14).

Argentina

Argentina is the southernmost part of this species' range, and here the species has never thought to have been abundant (Navarro *et al.* 2008, p. 1). In fact, this species was initially thought to be extirpated (locally extinct) in Argentina, but recent surveys have found small populations of this species in at least two locations in the northern province of Salta. There are anecdotal reports of this species crossing the Itaú River (Navarro *et al.* 2008, p. 3), which borders Bolivia and Argentina. Between 2005 and 2007, approximately 100 individuals were observed in the Salta Province (Coconier *et al.* 2007, p. 59). These areas include: Finca Itaguazuti, and the Acambuco Provincial Flora and Fauna Reserve (8,266 hectares [ha] or 20,426 acres [ac]) in the Tartagal Mountains and which borders Bolivia (BLI 2011b; Navarro *et al.* 2008, p. 1; Coconier *et al.* 2007, p. 59). In 2008, flocks of between 4 and 40 individuals of this species were observed in three ravines in the Salta Province. These locations were the Agua Fresca (Cool Water) Ravine north of Campo Cauzuti, El Limón Ravine (which had the largest population), and the Caraparí River Ravine. These are believed to be established populations, rather than flocks crossing over from Bolivia (Navarro *et al.* 2008, p. 1).

Bolivia

In Bolivia, the military macaw is regularly observed in five national parks (Hennessey 2010, pers. comm.). This species exists in the Andean foothills in Bolivia in forested areas extending from the northern Tambopata National Reserve to the southern Pilón Lajas Reserve (Hennessey *et al.* 2003, p. 319). These parks are in the general vicinity of the border of southern Peru and northern Bolivia (Hosner *et al.* 2009, p. 222; Navarro *et al.* 2008, p. 2; Hennessey *et al.* 2003, p. 322). They are part of the Greater Madidi-Tambopata Landscape (known as "Parque Nacional Madidi" or GMTL). Within the GMTL, there are thought to be reasonably healthy populations of this species in the Apolobamba National Integrated Management Area, Amboró and Madidi National Parks, and Pilón Lajas Biosphere Reserve (Hennessey 2011 pers. comm.; Hosner *et al.* 2009, p. 225). The GMTL is 110,074 km² (42,500 mi²) in size, and encompasses one of the largest areas of intact montane forest in the tropical Andes (WCS 2009, p. 2). This area is a high conservation priority due to its large number of endemic bird species (Hennessey *et al.* 2003, p. 319). Pilón Lajas consists of primary evergreen tropical lowland forest, foothill forest, and lower montane forest. Pilón Lajas was recognized as a Biosphere Reserve and Indigenous Territory by the Bolivian Government in

1992; however, it did not have any actual protections in place until 1994. This area in the past has been managed via a partnership with Veterinarians Without Frontiers (CEPF 2000, p. 28).

In 2008, this species was observed at Serranía Sadiri in Madidi National Park, La Paz Department, Bolivia (Hosner *et al.* 2009, p. 225). Serranía Sadiri is found just inside Madidi National Park. Here, flocks of between 2 and 36 individuals have been observed (Hosner *et al.* 2009, p. 228). The Pilón Lajas Biosphere Reserve is primarily in La Paz Department, but slightly overlaps into the Beni Department. Here, this species is described as uncommon (Hennessey 2003, p. 329). It was observed in Parapetiguasu-Taremakua, and Parapetiguas-Uruwigua in Santa Cruz, Cordillera Province, and at Altamachi and Madidi in Cochabamba, Ayopaya Province (MacLeod 2009, pp. 42–43). In summary, within Bolivia, there are many small populations of this species in areas that provide suitable habitat for this species (primarily large forest patches under some form of protection) (Herzog 2011 pers. comm.).

Colombia

In the late 1990s, there were approximately five disjunct populations in the central Andes mountains (Snyder *et al.* 2000, p. 125). In Colombia, groups of 50 individuals have been observed, and in one case, a population was estimated to have 156 individuals (Flórez and Sierra 2004, pp. 2–3). In most cases, the presence of these groups is related to cliff formations favorable for nesting (where they are less accessible to poachers), and where deforestation is having less of an impact (Flórez and Sierra 2004, pp. 2–3; Rodriguez and Hernández-Camacho 2002, p. 203). In Colombia, this species inhabits a wide range of altitudes and areas with various degrees of alteration (Flórez and Sierra 2004, pp. 1–3; Juniper and Parr 1998). In Colombia, this species has been observed between altitudes of 700 and 1,600 m (2,297 to 5,249 ft) (Flórez and Sierra 2004, pp. 1–3; Salaman *et al.* 2002, pp. 167, 187). Populations have been observed in Guajira peninsula, Las Orquideas, Tayrona National Park, Serranía de Perijá, Serranía de San Lucas, San Salvador Valley, Sierra Nevada De Santa Marta, La Guajira Department, and Cueva de los Guacharos National Park (Strewe and Navarro 2003, p. 32). In 1998, this species was observed in flocks of up to 12 individuals at Villa Iguana and Alto Cagadero in Serranía de los Churumbelos (Salaman *et al.* 2007, pp. 33, 38, 47, 89). It has been observed in palm stands in the San Salvador valley during the breeding season (December—July) (Strewe and Navarro 2003, p. 33). At Cueva de los Guacharos National Park, flocks of up to 16 have been observed (Strewe and Navarro 2003, p. 32).

There are two small, stable populations of military macaws at Sierra Nevada de Santa Marta (Sierra meaning mountain range) and Churumbelos, Cauca, with approximately 50 mature birds at each site (Fundación ProAves 2011a). In 2004, Flórez and Sierra estimated that the population in the cliffs of the Cauca River was 156 individuals and contained 54 breeding pairs and 26 nests (2004, p. 3). However, this population is subjected to impacts from poaching and deforestation (Flórez and Sierra, 2004, pp. 3–4), so the population now may be smaller. These researchers also noted that many chicks fall from the cliff nests and die. A new population was recently reported at two locations in the Catatumbo-Barí National Park on the Colombian-Venezuelan border (Avendaño *in litt*). There are no recent records in northern Antioquia (Paramillo), Serranía de San Lucas, or Perijá ranges (Fundación ProAves 2011a, pp. 28–29).

In the Frío Valley of Colombia, this species is reported to only be present during the breeding season (Strewe and Navarro 2004, p. 50). Several nests were found here in forest fragments. A population at El Congo Reserve was intensively studied in 2001. One nest was located 12 m (39 ft) above ground in a *Ceiba* tree, within open primary forest on a steep slope at 900 m (2,953 ft). A breeding population of 12 pairs, with groups of up to 28 was observed in December 2000. However, here it is still threatened in the valley by habitat loss and domestic trade (two cases noted in 2001) (Strewe and Navarro 2004, p. 50), and the population may now be decimated.

Ecuador

In Ecuador, this species is considered to be very rare (Arcos-Torres and Solano-Ugalde 2008, p. 72). This species has been observed in the areas of Sumaco and Zamora-Chinchipe in Ecuador (Snyder *et al.* 2000, p. 125) and at Kichwa River Reserve (Reserva Kichwa Río), within the Gran Sumaco Guacamayos Biosphere Reserve (Arcos-Torres and Solano-Ugalde 2008, p. 72). Most records of military macaw in Ecuador during the 1980s and 1990s found groups of up to 20 individuals (Ridgely and Greenfield 2001); however, lately most records have not exceeded 8 individuals (Arcos -Torres and Solano-Ugalde 2008, p. 72) except for a breeding colony of 16 individuals that was observed in the Reserva Kichwa Río (Arcos-Torres and Solano-Ugalde 2008, pp. 70, 72). Prior to 1980, it was observed in the upper Upano River Valley (Ridgely 1980 p. 244). In 2006, 200 ha (494 ac) were turned into the Narupa Reserve, where this species has been observed recently (Fundación ProAves *et al.* 2010, p. 42). Additionally, in 2010, a pair of military macaws was observed in northern Ecuador in the Sumaco region (Olah and Barnes 2010, p. 19).

Mexico

There are at least four populations of military macaws that are believed to exist in Mexico, each consisting of between 30 and 90 individuals (Rivera-Ortiz *et al.* 2008, p. 256). Those populations are discussed below. Identification of these populations is difficult for two reasons. First, this species is thought to primarily breed and forage in remote areas that are difficult to access, and second, it is a semi-migratory species that follows seasonal food sources, so flocks move to other areas seasonally. In Mexico, there are reasonably healthy but small populations in the following areas:

- Tehuacan-Cuicatlan Biosphere Reserve (at the border of Puebla and Oaxaca States),
- Mineral de Nuestra Señora Reserve (Sinaloa State),
- El Cielo Biosphere Reserve (Tamaulipas State),
- Sierra Gorda Biosphere Reserve (Querétaro State), and
- Sierra Manantlán Biosphere Reserve (Jalisco State).

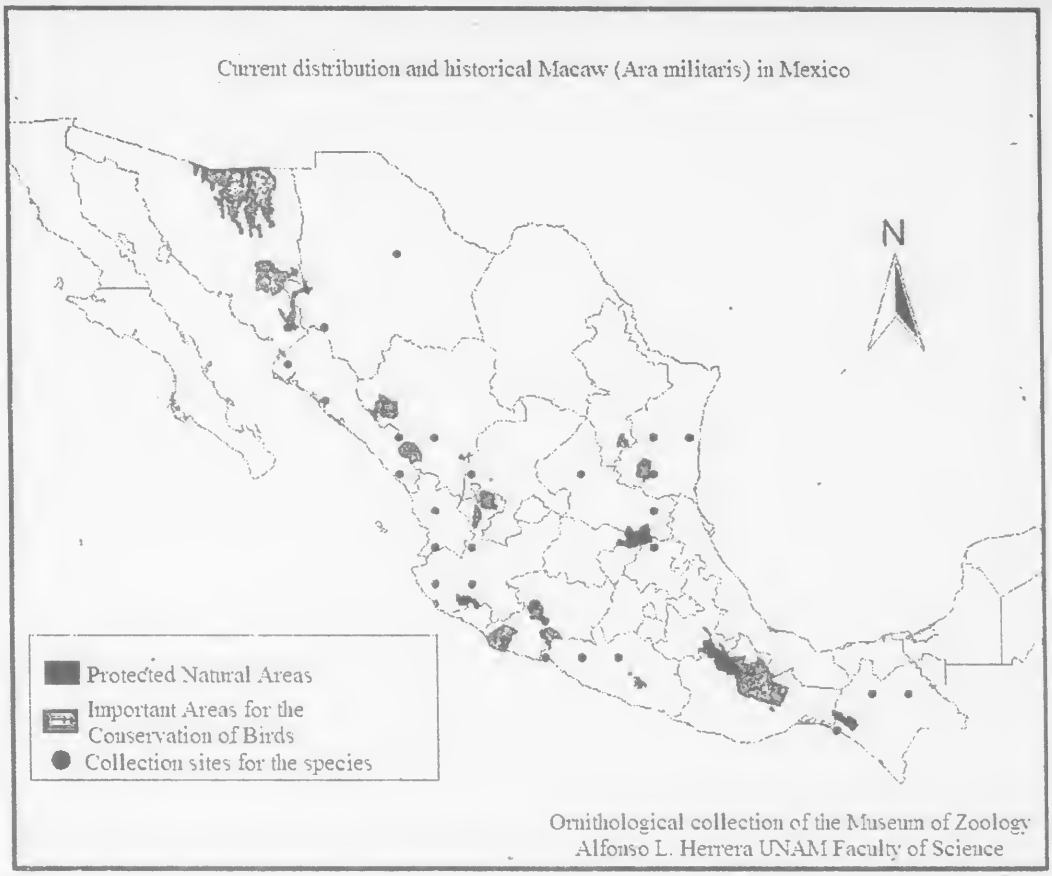

Figure 2. Current and historical distribution of A. militaris in Mexico. Courtesy of Arizmendi 2008.

In Mexico, there may also be isolated populations of military macaws in other States. Figure 2 shows the current and historical distribution of the military macaw in Mexico (Arizmendi 2008, p. 4). Other States where it may exist include Colima, Durango, Guerrero, Michoacán, Morelos, Nayarit (in the Valley of Flags or "Valle de Banderas"), Nuevo León, San Luis Potosí, and Zacatecas, although in some cases, there are no recent records of the species in several of the previously mentioned States (Bonilla-Ruz 2011 pers. comm.; Nova-Muñoz 2006, p. 20; Iñigo-Elías 1999, 2000 in Almazán-Núñez 2006, p. 20). Areas where it has been recently documented are described below.

Chihuahua

Researchers believe there is a remaining population in the Sierra Madre Occidental Mountains (north-central Mexico) in Otachique (Cruz-Nieto *et al.* 2006, p. 14). In 2005, 25 nests were observed (Cruz-Nieto *et al.* 2006, p. 14). This canyon is approximately 700 m (0.5 miles) wide by 14 km (8.6 miles) in length and consists of mature pines, firs, and oaks. Some gallery temperate forest remains in this area.

Jalisco

This species is found sporadically in the western foothills of Sierra del Cuale and Sierra Cacoma in Jalisco on the western coast of Mexico (Renton 2004, pp. 13–14). Here, it was observed in 2004, near a freshwater lake, Cajón de Peña (26 by 9 km (16 by 5.6 mi) in size), which was constructed in 1976. It is found in the Chamela-Cuixmala Biosphere Reserve (132,000 ha or 32,617 ac), which is managed by Mexico's Instituto de Ecologia of the National Autonomous University of Mexico (UNAM) and nongovernmental organizations (NGOs). Patches of semi-deciduous forest in this area form corridors between existing protected areas, such as the Chamela-Cuixmala and the Sierra Manatlán Biosphere Reserves (Renton 2004, p. 14). These patches likely have served as critical ecological links for this species.

Oaxaca

This species has recently been the focus of research in Sabino Canyon, Oaxaca. Sabino Canyon is in the Tehuacán-Cuicatlan Biosphere Reserve (Reserva de la Biosfera Tehuacan Cuicatlan) in central Mexico. In 2001, this species was observed in two canyons within this reserve. In both ravines, 20 pairs were observed nesting (Salazar-Torres 2001, p. 18). Here, this species nests in the canyon cliff walls in crevices that can be as high as 250 m (820 ft). Between 2002 and 2004, approximately 100 individual military macaws were observed (Bonilla-Ruz *et al.* 2007, p. 729). During 2007–2008, at least 67 birds were observed during the

month of August (Rivera-Ortiz *et al.* 2008, p. 256; Rivera-Ortiz *et al.* 2007, p. 26). This area is thought to be a fairly new site for this species (Rivera-Ortiz *et al.* 2007, p. 28). The known nesting site locations within the reserve increased from five to nine during the study period (Rivera-Ortiz *et al.* 2007, p. 28). Currently in the Sabino Canyon, the population of military macaws is thought to be between 90 and 100 individuals (Arizmendi 2008, p. 15). This is a large reserve, which was created in 1998. It spans 490,187 ha (1,211,278 ac) and is located within the Mixteca Oaxaqueña Province between the cities of Puebla and Orízaba. It is approximately 150 km (93 mi) southeast of Mexico City (*http://www.parkswatch.org*, accessed July 11, 2011) and approximately 2 hours from Tehuacan, Oaxaca, Mexico. Large mountain ranges delineate the boundaries of the reserve, and six rivers are within the protected area's boundaries.

Sinaloa

This species exists in Mineral de Nuestra Señora de la Candelaria Ecological Preserve, 12 km (7.4 mi) southeast of the town of Cosala in Sinaloa, Mexico (Rubio *et al.* 2007, p. 52; Bonilla-Ruz *et al.* 2006, p. 45). Its area is 1,256 ha (3,104 ac) and consists of dry tropical forest. In 2002, this area was designated as a protected area by the State of Sinaloa Decree.

Sonora

Between 2008 and 2009, it was observed at the Northern Jaguar Reserve in east-central Sonora (Flesch 2009, pp. 5, 12), and was described as a rare summer resident here. In this area, this species was recently observed in small flocks in cliff areas (Flesch 2008, pp. 35–36). In 2005, it was observed in the Río Aros canyon and upper Río Yaqui valley in an area known as the Yaqui Basin (O'Brien *et al.* 2006, pp. 4, 28). Flesch suggests that the species is likely to occur only in cliffs near stands of tropical vegetation (full citation 2008, p. 27).

Tamaulipas

Historically, in Mexico's eastern State of Tamaulipas, flocks of approximately 60 individuals were noted almost daily in the area of Gómez Farías, Mexico (Sutton and Pettingill 1942, p. 14). The Gómez Farías region is on the eastern slope of the Sierra Madre Oriental mountain range, known locally as the "Sierra de Guatemala." This area is in the general vicinity of the state-protected El Cielo Biosphere Reserve, where this species is still known to occur (Arvin 2001, p. 8). The University of Texas, Brownsville maintains a research station, Rancho del Cielo, within the 145,687-hectare (360,000-acre) reserve. The research station supports locally driven scientific research and community development (University of Texas, Brownsville, unpaginated). Activities conducted by the research station have positive impacts on this species by attracting researchers and the birding community, preserving and protecting habitat, and creating awareness in the area.

Peru

There are populations in Manu Biosphere Reserve, Tambopata National Reserve, and Bahuaja Sonene National Park in Peru. The two latter parks border one another in the southern Peruvian Amazon region (ParksWatch 2002, p. 1). This species has been observed around the Pongo de Mainique of the Urubamba River and on the upper Tambopata River (Snyder *et al.* 2000, p. 125). Recently, it was observed in the Madre de Dios department in the southeastern Peruvian Amazon (Lee 2010, p. 14). Flocks of 40 to 50 individuals have been observed in Atalya at Madre de Dios (Snyder *et al.* 2000, p. 125). The species has been observed seasonally in small numbers in the area of the Huállaga River Canyon (JGP Consultants 2011 pp. 1, 5, 8).

Venezuela

Within Venezuela, it has been documented primarily within protected areas. In this country, little information about the species exists (Rodriguez *et al.* 2004, pp. 375–376). Here it persists in the Andes in the Central Coastal Cordillera and Sierra de Perijá (Rodriguez *et al.* 2004, pp. 375, 378, 379). It has been found on the north slopes of El Ávila, Guatopo, Henri Pittier National Park, the State of Cojedes, Cerro La Misión, and Sierra de Perijá National Park (Desenne and Strahl 1994 and Fernandez-Badillo *et al.* 1994 in Snyder *et al.* 2000, p. 125). A new population of this species was recorded at two localities at the Catatumbo-Barí National Park at the Colombian-Venezuelan border (Avendaño *in litt*). Moist forests exist as four distinct enclaves within the Catatumbo Valley, in both northwestern Venezuela and northeastern Colombia. This extends the species' previously known range from the east slope of the Serranía de Perijá southwards (Avendaño *in litt*).

Summary of Range

According to several recent surveys, the military macaw exists in small populations ranging from a few pairs to approximately 100 individuals. It is found primarily in protected areas in Mexico, Colombia, Bolivia, and to a lesser extent, in Ecuador, Peru, Venezuela, and Argentina (see Figure 1), where large areas of suitable habitat remain. The population in the Pilón Lajas Biosphere Reserve, Bolivia, may serve as a link to other populations of this species to the northwest and to the south (Hennessey *et al.* 2003, pp. 330–331). Recent records of this species usually, but not always, find this species in protected areas (Flesch 2009; MacLeod 2009; Flesch 2008; Flórez and Sierra 2004; Rodriguez 2004; Renton 2004; Hennessey *et al.* 2003). These records find this species in areas such as protected parks where there are large remaining areas of suitable habitat for nesting, feeding, and breeding (see Figure 1).

Most current, available records of this species pertain to populations in Bolivia and Mexico, and to a smaller extent in Peru and Colombia. We do not know how this species is distributed outside of parks and protected areas other than what has been described in this status review, but it is likely that the species is primarily restricted to protected areas for the following reasons:

(1) It is a large species that requires habitat containing large trees or cliffs for nesting, both of which are limited, and large areas of suitable habitat for nesting, feeding, and breeding.

(2) This species requires a variety of specific plant species throughout the year for feeding, which likely only remain in enough abundance in protected areas.

(3) The species persists in areas where they are less accessible to poaching because they are located farther from roads.

(4) In some cases there are conservation awareness programs in place in these protected areas.

(5) Protected areas often offer some measure of protection from threats to the species.

Summary of Population Estimate

There are various but imprecise population estimates for this species. One report estimates the population to be fewer than 10,000 individuals (Arizmendi 2008, p. 3). BLI reports that the population is estimated to be between 10,000 and 19,999 mature individuals with a decreasing trend (BLI 2011, p. 1). We believe that the population is significantly fewer than 10,000 based on recent documented observations of this species, most of which are described in this status review. Researchers in Colombia agree

with our supposition (Botero–Delgadillo and Páez 2011, p. 13). Published literature (referenced in this document) has documented small flocks ranging from approximately 16 to 156 individuals distributed in disjunct locations in Mexico, Argentina, Ecuador, Venezuela, Peru, Colombia, and Bolivia. In situations where species are rare or have small populations, the number of observations made per survey may be very small and the number of sites limited, and, therefore, estimates and projections may not be accurate (Pollack 2006, p. 891; Marsden 1999, pp. 377–390).

The current total population number is unclear; however, based on these recent records, we believe that the population is substantially fewer than 10,000 individuals for the following reasons:

- It is unlikely to exist in large numbers other than in the areas documented, or it exists in small flocks of similar numbers in undocumented areas.
- It is unlikely to persist in viable populations in areas outside of protected parks, which contain large forested areas that contain suitable habitat.
- There is little evidence or documentation of substantial flocks. Because this is a loud, charismatic species, it is logical to assume that where this species exists, at least in substantial flocks, there is documentation or evidence of the species publicly available.
- The areas where this species exists are likely known because the species tends to return to the same area to nest. It has been recorded to use one area for approximately 30 years (Flórez and Sierra 2004, p. 3).
- This species may exist in other areas where it has not been documented, but if so, it is likely to exist in very small flocks, based on the best available scientific and commercial information.

We estimate that the population is closer to between 1,000 and a few thousand remaining individuals. However, with this status review, we are requesting information from range countries, species experts, local NGOs, and the public about this species regarding where it exists and current population estimates.

Conservation Status

There are various protections in place for this species at the international, national, and local levels. At the international level, this species is listed as vulnerable by the International Union for Conservation of Nature (IUCN) (2011). However, this status under IUCN conveys no actual protections to the species.

CITES

The military macaw is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is one of the most important means of controlling international trade in animal and plant species affected by trade. CITES is an international agreement through which member countries, called Parties, work together to ensure that international trade in CITES-listed animals and plants is not detrimental to the survival of wild populations by regulating their import, export, and reexport. All of the range countries for this species are Parties to CITES (CITES 2009, p. 1). Almost all psittacines (parrots), including the military macaw, were included in CITES Appendix II in 1981 (CITES 2008a, p. 1). This species was transferred to Appendix I of CITES in 1987, because populations were declining rapidly due to uncontrolled trapping for the international pet bird trade (CITES 1989a, pp. 1–7). An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade.

WBCA

The import of the military macaw into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992, in an effort to ensure that exotic bird species are not harmed by U.S. trade. The purpose of the WBCA is to promote the conservation of CITES-listed exotic birds by ensuring that all imports into the United States are (1) sustainable and (2) not detrimental to the species. Permits may be issued to allow imports of listed birds for scientific research, zoological breeding or display, or as a personal pet when certain criteria are met. The Service may approve cooperative breeding programs and subsequently issue import permits under such programs. Wild-caught birds may be imported into the United States if the Service approves a management plan for their sustainable use. At this time, the military macaw is not part of a Service-approved cooperative breeding program and does not have an approved management plan for wild-caught birds.

Argentina

There is only a small population remaining in Argentina, in the northern province of Salta. This species is considered to be a critically endangered species by the Government of Argentina (Navarro *et al.* 2008, p. 1). It is protected through national legislation (Law 22.421 and Decree 691/81), administered by the Dirección Nacional de Fauna y Flora Silvestres. Law 22.421 addresses the Conservation of Fauna, enacted in 1981. Decree 691/81 addresses the protection and conservation of wild fauna and is implemented through law 22.421.

Bolivia

In Bolivia, this species is listed as vulnerable. The 1975 Law on Wildlife, National Parks, Hunting and Fishing (Decree Law No. 12,301 1975, pp. 1–34) has the fundamental objective of protecting the country's natural resources. This law governs the protection, management, utilization, transportation, and selling of wildlife and their products. It also governs the protection of endangered species; habitat conservation of fauna and flora; and the declaration of national parks, biological reserves, refuges, and wildlife sanctuaries.

Colombia

In Colombia, various protections are in place. Colombia categorizes this species as "vulnerable" (Salaman *et al.* 2009, p. 21). A vulnerable species is considered to be one that is not in imminent danger of extinction in the near future, but it could be if natural population trends continue downward and deterioration of its range continues (EcoLex 2002, p. 10).

A conservation project focusing on the coffee zone of the middle Río Frío is ongoing and its goal is to create a conservation corridor connecting natural habitats and shade-grown coffee plantations (Strewe and Navarro 2004, p. 51). The establishment of the private nature reserve, Buena Vista, was the first step to conserve the foothill forest ecosystems. This was done in close cooperation with a local organization, Grupo Ecologico Defensores de la Naturaleza—Campesinos de Palomino, (Strewe and Navarro 2003, pp. 34–35). The Pro-Sierra Nevada de Santa Marta Foundation (FPSNSM) maintains a permanent monitoring station at Buena Vista nature reserve. FPSNSM is working toward sustainable development projects in cooperation with local communities, national park units, and coffee-grower committees in the region. This includes educational campaigns to limit hunting. Habitat management takes place on private lands in the lowlands and foothills of the San Salvador valley to reduce the pressure on the remaining natural forest

habitats, including a reforestation program using native tree species. Additionally, forest reserves have been established as part of a network of private nature reserves in the valley (Strewe and Navarro 2003, p. 35–36).

Ecuador

In Ecuador, this species is considered endangered, "en peligro de extinción" (Arcos-Torres and Solano-Ugalde 2008, p. 69). Here, this species is considered to be very rare (Arcos-Torres and Solano-Ugalde 2008, p. 72).

Mexico

In Mexico, the military macaw is protected as endangered under Mexico's Wildlife Protection Act, and this species has been highlighted as a priority species for conservation in the Mexican Parrot Conservation Plan (Rivera-Ortiz *et al.* 2008, p. 256; Renton 2004, p. 12). Its official list of endangered and threatened bird species is termed the Norma Oficial Mexicana 059 (NOM–059–ECOL).

Peru

In Peru, this species is listed as vulnerable and its protections fall under the jurisdiction of the National Institute of Natural Resources (Instituto Nacional de Recursos Naturales, INRENA). Peru's Supreme Decree No. 034–2004–AG (2004, p. 276.855) prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation.

Venezuela

In Venezuela, this species is listed as endangered (Rodriguez *et al.* 2004, p. 376).

NGO Involvement

In the 1980s, conservationists realized the value of identifying areas or habitat in terms of numbers of endemic bird species. BirdLife International, in partnership with countries, other nongovernmental organizations (NGOs), and various other partners, developed the Important Bird Area (IBA) program, which is a worldwide initiative to identify and protect critical areas for bird conservation. IBAs are areas that regularly contain significant numbers of one or more globally threatened species or other species of global conservation concern. One of the criteria in identifying important regions for bird conservation is the distribution of restricted-range and globally threatened species such as the military macaw. As of 2007, more than 8,500 IBAs had been identified worldwide (García-Moreno *et al.* 2007, p. 1). The military macaw has triggered the IBA criteria for 37 IBAs (BLI 2011, pers. comm.) Note that this does not mean this species always occupies these areas; rather, the species has been identified in these areas.

A number of locally based and international conservation organizations have developed programs in connection with protected areas within this species' range such as ecotourism associated with clay licks (Lee 2010, pp. 167–168). The Wildlife Conservation Society (WCS) is implementing a range of projects aimed at strengthening the management of Greater Madidi-Tambopata Landscape in Bolivia. Its program is based on three main categories: (1) Park management, (2) natural resources management, and (3) scientific research (Parks Watch 2005a, p. 35). In the Greater Madidi-Tambopata Landscape, where the WCS is monitoring populations of the military macaw (WCS 2009, p. 8), the area encompasses one of the largest swaths of intact montane forest in the Tropical Andes in northern Bolivia and southern Peru. It is 110,074 km² (42,500 mi²) and includes five protected areas.

A Colombian-based NGO, Fundación ProAves, is also working to protect this species and its habitats. Fundación ProAves developed a conservation plan for 2010 to 2020 for several parrot species, including the military macaw (Botero-Delgadillo and Páez 2011, p. 7). However, it is unclear if or when it will be adopted by the Government of Colombia.

In Mexico, several NGOs are participating in the conservation and management of this species. In 1989, a strong citizen movement began to conserve the 383,567-ha (947,815-ac) Sierra Gorda Biosphere Reserve by establishing the local group, Grupo Ecológico Sierra Gorda. In collaboration with the local community, this group has taken action to effectively protect bird communities as well as other groups of wildlife in this area. Strategies include environmental education, the establishment of private reserves, and payment for environmental services in a 25,000-ha (61,776-ac) area of this reserve (Pedraza-Ruiz, 2008 p. 1). The Chamela-Cuixmala Biosphere Reserve is managed by Mexico's Instituto de Ecologia of the National Autonomous University of Mexico (UNAM) and local NGOs. Other NGOs are working with communities to obtain macaw feathers from aviaries so that indigenous people will not hunt the macaws for their feathers (Renton 2004, p. 14). In the Sinaloa area, the Universidad Autónoma de Sinaloa has been active in conservation of this species since 1998 (Rubio *et al.* 2007, p. 52). This university conducts research, and conducts outreach activities to foster knowledge and conservation of this species at the Mineral de Nuestra Señora de la Candelaria Ecological Preserve.

Evaluation of Threat Factors

Introduction

Throughout the range of this species, the factors impacting this species are generally very similar. The current primary factors affecting the military macaw are habitat loss and degradation, and poaching (Gastañaga *et al.* 2011, entire; Strewe and Navarro 2004, p. 50). Habitat loss is primarily due to conversion of the species' habitat (generally forests) to agriculture and other forms that are not optimal for the military macaw (Donald *et al.* 2010, p. 26; Flórez and Sierra 2004, p. 3). Conversion of habitat to soy plantations is now considered to be one of the principal causes of Amazon deforestation (Bonilha 2008, p. 17). Because this species has a small and fragmented population, poaching, while apparently uncommon, remains a concern (Botero-Delgadillo and Páez 2011, p. 13).

This status review focuses primarily on where this species has been documented, in parks and other areas with protected status and the peripheral zones. In some cases, we will evaluate the factor by country. In other cases, we may evaluate the factor by a broader region, if we do not have adequate information specific to a particular country about this species. This is because often threats are the same or very similar throughout the species' range. For particular areas in which we lack information about the species, we request additional information from the public during this proposed rule's comment period (see **DATES**, above).

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The military macaw has a large but fragmented distribution (276,000 km² (106,564 mi²)), and not all locations where the military macaw exists are known. Habitat destruction and modification is one of the main threats to the military macaw; significant amounts of this species' habitat have been converted such that its habitat is no longer suitable and no longer provides adequate shelter (nesting sites) and food sources, and these causes of habitat loss are likely to continue. Between 2000 and 2005, of all the continents, South America had the largest net loss of forested area, experiencing a loss of 4.3 million ha

(10.6 million ac) per year (FAO 2006 in Mosandl *et al.* 2008, p. 38). In some countries, extractive activities for nontimber forest products occur, such as the removal of palm trees (Arecaceae family) to obtain hearts of palm (ParksWatch 2011; *http://www.tropicalforestresearch.org*). Currently, the military macaw exists in many parks and other areas that have protected status (Coconier *et al.* 2009, p. 63; Arizmendi 2008, p. 4; Rodriguez *et al.* 2004, p. 78; Renton 2004, p. 12). Studies have found that compared with the surrounding areas, conditions inside the parks were significantly better than their surrounding areas (Bruner *et al.* 2001, p. 125). One study found that in 40 percent of tropical parks, land that had formerly been under cultivation and that was incorporated into park boundaries had recovered. This subsequently led to an actual increase in vegetative cover. The study found that 83 percent of parks were successful at mitigating encroachment (Bruner *et al.* 2001, p. 125). This was confirmed in a more recent study that found that forests in conservation units were four times better at protecting against deforestation than unprotected areas (Oliveira *et al.* 2007, p. 1,235). However, this species still faces habitat loss, even in protected areas.

We are limiting our analysis to areas where there is readily available information about this species. For instance, there is very little information available about this species in Argentina and Venezuela (Coconier *et al.* 2009; Navarro *et al.* 2008, p. 1; Coconier *et al.* 2007; Rodriguez *et al.* 2004). However, in both of these countries, the species faces similar threats (such as the lack of suitable habitat) as in other countries (Rodriguez *et al.* 2004, p. 373). The largest populations of this species, discussed in detail in the Range, Observations, and Population Estimates section, appear to be in Mexico and Bolivia. Even in these countries, its populations are small and its distribution is fragmented. In other countries within its range such as Colombia, Peru, and Ecuador, it exists in smaller populations, and Argentina and Venezuela have even smaller and possibly negligible populations. Additionally, the military macaw may have occurred in Guatemala in the past, but it is no longer found there (Gardner 1972 in Snyder *et al.* 2000, p. 125). We invite experts and the public to provide any additional information they may have about the species in these countries, which we will consider and incorporate into the decision making process for our final determination on this proposed action.

Argentina

In Argentina, habitat destruction, particularly deforestation for agricultural expansion for soy plantation, and timber extraction have significantly increased in recent years (Devenish 2009, p. 60; Chebez *et al.* in litt. in Navarro *et al.* 2008, pp. 7, 9; DiPaola *et al.* 2008, pp. 1, 8; FAO 2007, p. 42). The species was thought to no longer exist in Argentina, which is the southernmost part of its range, but recent surveys found small populations of this species in at least two locations in the Salta Province (Navarro *et al.* 2008, p. 1). The primary threat to forested areas in Argentina is the expansion of agriculture, particularly soy, into remaining habitat such as the Chaco plains in the Andes mountain range (Centro de Acción Popular Olga Márquéz de Aredez (CAPOMA) 2009, p. 6). The practice of drying swamps through channeling is common in northern Argentina, particularly for producing soybeans, which have an increasing demand in the global market. The current rate of deforestation stands at 25,000 ha (61,776 ac) per year resulting from land converted to agricultural use (Devenish 2009, p. 60). The area converted to soy production increased from as little as 3 percent in the 1970s to 40 percent of the total crop area in 2003, covering 14 million ha (34.6 million ac) (Devenish 2009, p. 60). Conversion of lands to soy production is favored by the current political and economic climate, both at the global and national levels (Devenish 2009, p. 60). With regard to other types of land use, the area used for cattle ranching has decreased, but exotic tree plantations have doubled (Devenish 2009, p. 60).

In addition, pipeline routes and associated roads are being established in this area in connection with oil, gas, and mineral exploration (Navarro *et al.* 2008, pp. 7, 9). Road building operations greatly facilitate access to large, previously inaccessible forested areas (Fimbel *et al.* 2001, pp. 511–512). The area occupied by permanent facilities including pipelines and refineries is relatively small, but oil development areas cover large tracts of land. Oil development can have significant negative impacts on nearby habitat through construction of roads and other buildings, discharge of contaminants, and oil spills and leaks (Rhee et al. 2004, chap. 6, p. 31).

Although some of this species' habitat is protected, its habitat continues to shrink in Argentina. In the area of Acambuco, where the military macaw has been observed, the designation of Acambuco Reserve as a provincial reserve provides some protective measures. The purposes of this reserve, in part, are to preserve its genetic resources, to preserve the environment surrounding catch basins of its rivers, and to guarantee the maintenance of the biodiversity living in the reserve. However, in the Salta Province, this species is primarily found in areas that are unprotected, with the exception of the Acambuco Reserve. In summary, significant amounts of this species' habitat have been converted such that its habitat is no longer suitable, and these causes of habitat loss are likely to continue.

Bolivia

Madidi National Park experiences threats representative of threats to this species' habitat in Bolivia, and this is one of the key areas where this species likely has a viable population in Bolivia. Thus, we focused our analysis on this park. The National Service of Protected Areas (SERNAP) has authority over Bolivia's parks and protected lands. Approximately 53 percent (57.2 million ha; 141.3 million ac) of Bolivia's total area is forested (FAO 2011, p. 118). Of this area, 38.9 million ha (96.1 million ac) are within the Bolivian Amazon and constitute 5 percent of the total Amazon forest (Locklin and Haack 2003, p. 774). As of 2005, Bolivia had 12 national parks, including 6 with integrated management natural areas, 1 with indigenous territory (or communal lands), and 4 national reserves; 2 biosphere reserves; and 3 integrated management natural areas, totaling 16,834,380 ha (41,598,659 ac) (ParksWatch 2005, p. 2). A discussion of typical threats in Bolivia's parks follows. The region suffers from chronic and intense poverty levels, which affect more than 90 percent of the population (Instituto Nacional de Estadística de Bolivia (INE) 2005). The result is intense conflict between development and conservation. In Madidi National Park, the three greatest threats to the nature preserve are the construction of a highway within the park, drilling for oil, and a planned hydroelectric dam. Other activities that are impacting or are likely to impact this park are illegal logging, gold mining, and uncontrolled tourism (ParksWatch 2011b, pp. 1–15; Chavez 2010, pp. 1–2).

Deforestation and Logging

The forests of Bolivia have mainly been subjected to selective logging (Salo and Toivonen 2009, p. 610; Fredericksen 2003, p. 10), which has been done at very low levels and with

low human pressures (Pacheco 2006, p. 206), allowing them so far to remain largely intact. In the five national parks where the military macaw is regularly observed, there are some protections in place for the species' habitat (Hennessey 2010, pers. comm.). However, logging still occurs within the range of this species (ParksWatch 2011b, p. 1). Large tracts of primary forest remain in Bolivia, but it is likely that some of these will be subjected to logging (Fredericksen 2003, p. 13) due to slash-and-burn activities by indigenous communities, and because forest products are one of Bolivia's primary exports (Byers and Israel 2008, p. vi). The use of slash-and-burn practices on steep and erodible slopes has considerably affected the area's hydrological regime, particularly near the city of Santa Cruz. In many areas of human settlement, soil erosion is compounded by logging, nutrient depletion, and weed invasion.

As of 2006, 89 timber companies held the rights to 5.8 million ha (14.3 million ac) of logging concessions (Pacheco 2006, p. 208). The Bolivian Forestry Law of 1996 (Forestry Law 1700) requires the preparation and approval of management plans and adherence to best management practices ((BMPs) (Nter *et al.* 2011, p. 292; Fredericksen 2003, p. 10). For instance, harvesters must pre-map harvestable trees (which have minimum diameter limits), protect seed trees, and set aside areas that are designated as protected or not harvestable (Nter *et al.* 2011, p. 292). Management issues still need to be addressed, including sufficient regeneration time for commercial species (Fredericksen 2003, p. 10). However, Bolivia continues to attempt to balance the use of its natural resources with competing priorities. For example, the Pilón Lajas Management Plan divided the reserve into specific zones to combine indigenous community rights with conservation initiatives (Hennessey *et al.* 2003, p. 320). Despite national laws and regulations, activities such as illegal timber extraction continue to spread unabated (World Bank 2006, p. 8; U.S. Forest Service 2007, p. 2; Pacheco 2006, p. 208; TRAFFIC 2006, p. v).

Roads

There are increasing demands for road infrastructure within Bolivia for many reasons. It is one of the poorest countries in South America (MacLeod 2009, p. 6; INE 2005), and the government would like to improve its economy (ParksWatch 2011b, p. 13). The construction of the Apolo-Ixiamas Road is one way of facilitating access to its natural resources. A road has been proposed that would bisect the Madidi National Park and Natural Integrated Management Area, opening vast, currently inaccessible tropical forest areas to colonization and resource extraction (ParksWatch 2011b, pp. 1–2; Fleck *et al.* 2006, p. 13). This can promote illegal logging, and facilitate access to previously inaccessible forested areas (Fimbel *et al.* 2001, pp. 511–512). The construction of roads through this park has been a source of controversy for several years (*http://conservation-strategy.org/en/project/economics-road-through-madidi-national-park,* accessed October 6, 2011). The current status of the road and whether it will be constructed around the park or through the park remains unclear. However, regional development plans are often implemented without consideration of impacts on natural resources (WCS 2009, p. 4). Plans to connect Bolivia and Peru to Brazil's expanding markets and expand the energy industry (oil and gas) will affect fragile areas of high biodiversity (WCS 2009, p. 4). Roads constructed in the past have also been problematic. In the late 1990s, roads through Serranía Sadiri spurred an increase in unsustainable logging of the area's mahogany trees, which were the most valuable tree at the time (World Land Trust 2010, p. 1).

Hydroelectric Power

Possibly one of the greatest threats in the Madidi National Park is the proposed Bala Hydroelectric Dam Project at the Beni River in the Bala Gorge, where the Beni River goes through the Bala Mountain Range (WCS 2011, p. 2). El Bala Hydroelectric Dam, as proposed, could flood much of Madidi National Park and the adjacent biosphere reserve and indigenous territory Pilón Lajas, which is an area of about 2,000 km² (4,942 mi²) (Chavez 2010, pp. 1–2; Bolivia Supreme Decree 24191). Construction of dams can have severe impacts on ecosystems (McCartney *et al.* 2001, p. v). For example, a dam blocks the flow of sediment downstream. During construction of dams, disturbance to soils at the construction site is one of the largest concerns. This leads to downstream erosion and increased sediment buildup in a reservoir. Although the current status of this dam is unclear, it is clear that the Government of Bolivia is intent on becoming more self-reliant, in part through creating its own sources of energy through hydroelectric dams.

Oil Exploration

In October 2010, the Bolivian Government approved Supreme Decree 0676, which directly affects the Madidi National Park and the Biosphere Reserve and Indigenous land called Pilón Lajas (*http://www.oecoamazonia.com/en/news/bolivia/171-bolivia-transforma-parque-na-amazon;* accessed September 13, 2011) by extending gas and oil exploration and development. Oil exploration in the region would not only affect the pristine nature of the Madidi National Park and Pilón Lajas, but also the subsistence of the indigenous people living in the area (*http://www.amazonfund.eu/art-oil-madidi.html*, accessed September 13, 2011). The exact effects of oil exploration to this species are still unclear.

Other Pressures

In Madidi National Park, there is limited legal hunting, but in the areas surveyed, this species was described as common and not exploited (Hosner *et al.* 2009, p. 226). Nine villages or communities are within the national park, and 22 are in the integrated management natural area. Of the 31 communities, three are located in the Andean plateau zone. In the lowlands, two of the communities occupy the zone of valleys around the municipality of Apolo. Madidi's buffer zone has an additional 11,000 indigenous inhabitants (Fleck *et al.* 2006, p. 29). Timber extraction still occurs here (WorldLand Trust 2010, p. 1). In 2010, an additional 25,090 ha (62,000 ac) of pristine tropical rainforest in Bolivia were protected, following a decision by an indigenous community to create a tourism refuge in the Sadiri rainforest (WorldLand Trust 2010, p. 1). Landless Andean farmers make a living in the lowlands, and they at times expand the agricultural frontier, increasing the risk of disease transmission between domestic animals and wildlife, bringing crops and domestic animals closer to wildlife predators, and increasing hunting pressure in surrounding forests (WCS 2009, p. 4). Harvest of nontimber forest products such as palm hearts (in the Arecaceae or Palmaceae family), jatata (Geonoma species), pachiuva (*Socratea exorrhiza*), and jipijapa (*Carludovica palmata*) for subsistence (Fredericksen 2003, p. 13) also occurs.

In summary, threats to the species' habitat in Bolivia include unsustainable land use practices, illegal logging, road building, and exploration activities for oil extraction, which are contributing to the erosion of Bolivia's ecosystems

(MacLeod 2009, p. 6; ParksWatch 2005, p. 1). Large tracts of primary forest remain in Bolivia, but it is likely that many of these will be subjected to logging and other pressures, such as extraction of nontimber forest products, particularly because forest products contribute to Bolivia's national exports (Byers and Israel 2008, p. vi). The Government of Bolivia is attempting to balance improving its economy with conservation initiatives, and some of its development initiatives may negatively impact this species' habitat. Despite protections in place, this species' habitat in Bolivia continues to experience these threats, and we expect these pressures to continue into the future.

Colombia

In the past, human colonization, development, and exploration within the range of the species in Colombia were limited due to the exceptionally steep and high terrain of the Andes (Salaman *et al.* 2002, p. 160). However, researchers reported in 2004 that the Cauca River Canyon in northeastern Colombia, an area containing military macaws, was extensively deforested (Floréz and Sierra 2004, p. 3). The main threats in the lowlands are the expansion of agriculture, particularly by small farmers in the middle altitude areas, and extractive activities such as hunting (including the removal of birds to sell as pets) and wood harvesting (Salaman *et al.* 2007, p. 89). As resources become scarcer in the lowlands, these pressures move upland. Associated with these farming practices is the use of livestock and the erosion caused by livestock grazing on steep slopes, as well as erosion due to cultivation.

Until recently, forest cover was largely continuous in Colombia, but deforestation has increased dramatically (FAO 2010, pp. 22, 106; FAO 2002). Deforestation rates in lowland moist forest on the foothills of the eastern Andes of Colombia are rapidly accelerating. Deforestation has increased from 1.4 percent (1961–1979) to 4.4 percent (1979–1988), and is correlated with increasing human population density (Salaman *et al.* 2007, p. 89; Viña and Cavelier 1999, p. 31). Primary forest habitats throughout Colombia have undergone extensive deforestation. Viña *et al.* (2004, pp. 123–124) used satellite imagery to analyze deforestation rates and patterns along the Colombian-Ecuadorian border (in the Departments of Putumayo and Sucumbios, respectively), finding that between 1973 and 1996, a total of 829 km^2 (320 mi^2) of tropical forests within the study area were converted to other uses. This corresponds to a nearly one-third total loss of primary forest habitat, or a nearly 2 percent mean annual rate of deforestation within the study area.

Since the 1970s, the Colombian Government has encouraged road construction and colonization projects. The goal is to create links to the vast and undeveloped Amazonian region, and to open up the Llanos and Amazonian lowlands for utilization of their natural resources (Salaman *et al.* 2007, pp. 10, 89; Salaman *et al.* 2002, p. 160). In recent years, this species' habitat has come under increased pressure with the completion of the Mocoa-Bogotá highway, the proposed Puerto Asís-Florencia road, and the discovery and exploitation of petroleum and precious metals. All of these factors contribute to an escalation in human encroachment and associated impacts that degrade this species' habitat (Salaman *et al.* 2007, p. 10). The few remaining forest connections between the upper and lower slopes are under pressure, even where they are minimally protected.

Five main routes link the lowlands from Colombia's high Andean interior. Infrastructure development on the eastern slope of the Andes in Colombia, as well as adjacent Ecuador, has also caused significant human population pressures and has led to much habitat degradation. Increased and improved access roads have led to the conversion of mature tropical forests for pasture lands, petroleum products exploitation, and coca plantations (Salaman *et al.* 2007, p. 89). These road projects to link Colombia with Venezuela and Ecuador along the entire eastern base of the Andes have contributed to additional deforestation.

Serranía de los Churumbelos National Park

Currently, the Serranía de los Churumbelos forest is almost entirely intact, and land is owned by the government and uncolonized (Salaman *et al.* 2007, pp. 10, 91–92). This mountain range has largely avoided the degree of human impact that other regions have suffered. However, this is changing rapidly due to mineral exploration (petroleum and precious metals) and natural resources (timber and rich organic soils for agriculture) demands. The Serranía de los Churumbelos could become the focus of large-scale deforestation and colonization in the near future (Salaman *et al.* 2007, p. 89). Parque Natural Nacional Cueva de los Guácharos provides some protection to the forests in this region although it is a small park (approximately 5,000 ha or 12,355 ac) and even here, illegal encroachment occurs (Salaman *et al.* 2007, p. 89).

Catatumbo-Barí National Park

The primary threat in the Catatumbo-Barí National Park (at the Colombian-Venezuelan border) is deforestation and impacts associated with coca plantations surrounding the Park (Fundación ProAves 2011, Avendaño in litt). Coca cultivation has fluctuated for the past several years. Over a 4-year study period, it contained about 100 ha (247 ac) of coca (United Nations Office on Drugs and Crime, undated report, p. 33). A new population of this species was recently recorded at two locations in this park (Avendaño in litt). One population in the Cauca valley (fewer than 50 mature birds) could be affected by the construction of a dam (155 m (508.5 ft) in height) that could affect its sole breeding cliff. However, this dam is still in the planning stages (Fundación ProAves 2011 pers. comm., September 4, 2011).

Ecuador

Ecuador is experiencing the highest deforestation rate in South America (Mosandl *et al.* 2008, p. 37). Forested habitat within many parts of Ecuador has diminished rapidly due to logging, clearing for agriculture, and road development (Youth 2009, pp. 1–3; Mosandl *et al.* 2008, p. 37; Sierra 1999, p. 136; Dodson and Gentry 1991, pp. 283–293). Between the years 1990 and 2005, Ecuador lost a total of 2.96 million ha (7.31 million ac) of primary forest, which represents a 16.7 percent deforestation rate, and a total loss of 21.5 percent of forested habitat since 1990 (Butler 2006b, pp. 1–3; FAO 2003b, p. 1). Much of the primary moist forest habitat has been replaced with pastures and scattered trees (Collar *et al.* 1992, p. 533), and forest habitat loss continues in Ecuador. Very little suitable habitat now remains for the species here, and remaining suitable habitat is highly fragmented (Bass *et al.* 2010, p. 2; Snyder *et al.* 2000, p. 122). In the area where this species exists, near the Gran Sumaco Biosphere Reserve, there are several oil reserves (Celi-Sangurima 2005, p. 22). However, specific impacts to this species as a result of oil exploration or extraction activities are unknown.

The colony in Kichwa River Reserve is currently in an area designated as protected, although it is unclear what these protections entail. In this area, the local community group Macaw Rio is interested in conducting ecotourism. Although this colony has persisted for about 150 years (Huatatoca, in litt.), it

likely will be affected by logging and the resulting deforestation on nearby land. Researchers suggest that the apparent lack of this species in Ecuador is possibly related to lack of suitable sites for the formation of breeding colonies, or lack of knowledge about sites that may be located in inaccessible areas (Arcos-Torres and Solano-Ugalde 2008, p. 72). We know of no specific threats to the species in the Kichwa River Reserve, other than those associated with small population sizes, which is discussed under Factor E, below.

Mexico

Mexico has suffered extensive deforestation (conversion of forest to other land uses) and forest degradation (reduction in forest biomass through selective cutting, etc.) over the past several decades (Commission for Environmental Cooperation (CEC) 2010, pp. 45, 75). In recent decades, Mexico's deforestation has been rapid (Blaser *et al.* 2011, pp. 343–344). Between 1990 and 2000, Mexico lost forest (factoring in natural regeneration of degraded forest and planting of forest in areas that previously did not have forest) at a net rate of 344,000 ha (850,043 ac) per year (FAO 2010, p. 21). During 1990–2010, Mexico lost approximately 6 million ha (15 million ac) of forest, and had one of the largest decreases in primary forests worldwide (FAO 2010, pp. 56, 233). Although Mexico's rate of forest loss has slowed in the past decade, it still continues. The current rate of net forest loss in Mexico is 155,000 ha (383,013 ac) per year, with an estimated 250,000–300,000 ha (617,763–741,316 ac) per year degraded (Government of Mexico (GOM) 2010b, in Blaser *et al.* 2011, p. 344; FAO 2010, p. 233).

Currently, Mexico has 64.8 million ha (160.1 million ac) of forest (Food and Agriculture Organization (FAO) 2010, p. 228), and 50 percent of these forests are considered degraded. Projections of lost forested area by the year 2030 in Mexico are between 10 percent to nearly 60 percent of mature forests lost, and approximately 0 to 54 percent of regrowth forests lost (CEC 2010, pp. 45, 75). Deforestation via forest conversion to agricultural uses remains a major driver of land transformation in Mexico (CEC 2008, p. 24). Agricultural production is projected to double within the country by 2030 (CEC 2010, pp. 34, 70). Although some of this increase in production is expected to be due to an increase in productivity on previously converted land, total agricultural land area in Mexico is projected to increase by 6,300 to 41,400 ha (15,568 to 102,302 ac) by 2030 (CEC 2010, p. 75).

In the range of the military macaw, such as the tropical forest along the Pacific coast of Mexico, high rates of deforestation have occurred; slash-and-burn agriculture still occurs along with grazing. In 2002, it was estimated that the species had suffered a 23 percent habitat loss within its range in Mexico using a Genetic Algorithm for Rule-set Prediction (GARP) analysis tool (Ríos-Muñoz 2002, pp. 24, 32). GARP analysis essentially uses ecological characteristics of known species locations in order to determine its likely distribution.

A 3-year study documented loss of habitat, particularly trees used by macaws, in the Tehuacan-Cuicatlan Biosphere Reserve, Sabino Canyon. In their study, researchers found a total of 170 individual plants of species consumed by military macaws in the pine forests in an area of 1,500 m^2 (16,146 ft^2) in 2005 (Arizmendi 2008, p. 43). By January 2008, eleven (6.5 percent) of these trees had been logged. In the transitional forest between dry and pine (in an area of 1,000 m^2 or 10,764 ft^2), 134 plants were documented in 2005, and by January 2008, fifteen (11.90 percent) of them had been logged. Arizmendi suggested that these activities are carried out by local communities, and suggested that a local environmental education campaign be implemented. A reduced number of trees limits the availability of adequate food resources across the landscape. With fewer trees remaining, the area cannot support the same number of individuals of the species and therefore causes a further reduction in the population. Macaws were not found in deforested areas, even where an important food source, Hura polyandra, was left as shade for cattle (Rivera-Ortíz *et al.* 2008, p. 256). As further support, in Jalisco, most of the sites where macaws were present had little or no habitat loss (note that none of the sites in Jalisco where military macaws were located were in protected areas). No macaws were located in sites with more than 30 percent habitat loss, even though these sites may have had abundant trees.

Mining

At the Mineral de Nuestra Señora reserve in Cósala, where this species occurs, mining activities are occurring (Rubio *et al.* 2007, p. 52; Bonilla-Ruz *et al.* 2006, p. 45). This reserve is 12 km (7.5 mi) southeast of Cósala in Sinaloa, Mexico. This reserve was created after a joint effort in 1999 between the state, municipal government, and the Autonomous University of Sinaloa. The Autonomous University of Sinaloa conducted technical studies to propose the area as a nature reserve. The university also conducted conservation projects here which focused on the "Ecology and Conservation of the Military Macaw" and "Environmental Education and Ecotourism." In 2002, the Mineral de Nuestra Señora reserve was formally designated. Since then, parrot populations and their habitat here both within and outside the preserve have been affected by mining activities taking place in the area (Rubio *et al.* 2007, p. 52). In early 2005, mining efforts began on underground development and drilling (Scorpio Mining 2011, p. 2). The current effect of mining on the species is unclear.

Peru

There is little to no current published information with respect to specific threats to this species in Peru (Gastañaga *et al.* 2011, entire; BLI 2011, p. 2; JGP 2011, entire; Lee 2010, entire; Cowen 2009, entire; Terborgh 2004, entire; Brightsmith 2004, entire). It exists in several parks which convey some measures of protection (Oliveira *et al.* 2007, p. 1235; Terborgh 2004, p. 35). Peru's protected areas are managed by the General Department of Natural Protected Areas, INRENA, under the authority of Law No. 26834, Law of Natural Protected Areas, promulgated in 1997. The Peruvian national protected area system includes several categories of habitat protection. Habitat may be designated as any of the following:

(1) Parque Nacional (National Park, an area managed mainly for ecosystem conservation and recreation);

(2) Santuario (Sanctuary, for the preservation of sites of notable natural or historical importance);

(3) Reserva Nacional (National Reserve, for sustainable extraction of certain biological resources);

(4) Bosque de Protección (Protection Forest, to safeguard soils and forests, especially for watershed conservation);

(5) Zona Reservada (Reserved Zone, for temporary protection while further study is under way to determine their importance);

(6) Bosque Nacional (National Forest, to be managed for utilization);

(7) Reserva Comunal (Communal Reserve, for local area use and management, with national oversight); and

(8) Cotos de Caza (Hunting Reserve, for local use and management, with national oversight) (BLI 2008, p. 1; Rodríguez and Young 2000, p. 330).

Because the designations of national parks, sanctuaries, and protection forests are established by supreme decree that supersedes all other legal

claim to the land, these areas tend to provide more habitat protection than other designations. All other protected areas are established by supreme resolution, which is viewed as a less powerful form of protection (Rodríguez and Young 2000, p. 330).

This species has been documented in the Tambopata National Reserve, which is a 275,000-ha (679,540-ac) conservation area created by the Peruvian Government in 1990. The main purpose was to protect the watersheds of the Tambopata and Candamo rivers. This area protects some of the last pristine lowland and premontane tropical humid forests in the Amazon. Within the Tambopata National Reserve, there have been isolated human settlements along stretches of the Malinowski River and where it flows into the Tambopata River. Fewer than 5,000 people inhabit the Tambopata National Reserve's border area to the north. They make a living of slash-and-burn agriculture, small-scale gold mining, timber extraction, and hunting and fishing. One area of Tambopata, including a buffer zone, was recently described as a "crisis zone" (Lee 2010, p. 169). It has been described as being at high risk to illegal settlement, timber extraction, and mining (Lee 2010, p. 169).

Populations of this species are thought to be in the Manu Biosphere Reserve and the Bahuaja Sonene National Park in Peru (WCS 2007, p. 1; Herzog in litt. 2007; Terborgh 2004, pp. 40–41). Problems here are primarily due to human population growth (Terborgh 2004, pp. 40–41). Five indigenous groups reside in the Manu Biosphere Reserve—they are both legal and illegal settlers (Terborgh 2004, pp. 40–41). An ecological research station has been in place since 1973 in Manú National Park (Terborgh 2004, entire), which also adds some protection to the species. Research has shown that often simply by having a long-term research presence there, this serves to reduce poaching (Campbell *et al.* 2011, p. 2). Unlike parks in the United States, in countries such as Peru, parks and protected areas were formed around the indigenous tribes that live there (Terborgh 2004, p. 51), and the management and purpose of the parks often include protection of the rights of indigenous human communities. This philosophy of park protection and mandates of parks is different from in the United States, where humans are viewed as visitors to the parks, rather than permanent residents (Terborgh 2004, p. 51). In Manu Biosphere Reserve, another potential threat is oil exploration. Both Shell and Mobil Oil have conducted oil exploration activities in this area (Terborgh 2004, p. 55; ParksWatch 2002, pp. 5, 7). Within Bahuaja, as of 2002, there were no human establishments within its boundaries (ParksWatch 2002a, p. 1). However, activities that could affect the military macaw in this area include gold mining, illegal logging, extraction of forest resources, and an increase in farming (ParksWatch 2002b, p. 1).

Venezuela

There is little published information about the species in Venezuela (BLI 2011, p. 2; Rodriguez 2004, entire). Here it exists in the Andes in the Central Coastal Cordillera, and Sierra de Perijá (Rodriguez *et al.* 2004, pp. 375, 378, 379). It has been found on the north slopes of El Ávila, Guatopo, Henri Pittier National Park, Ceroo La Mision, Sierra de Perijá National Park (Desenne and Strahl 1994 in Snyder *et al.* 2000, p. 125; Fernandez-Badillo *et al.* 1994 in Snyder *et al.* 2000 p. 125). Most of its range in Venezuela is within protected areas, but threats still exist in the protected areas here (Snyder *et al.* 2000, p. 125). In 2000, Snyder *et al.* noted that Sierra de Perijá was being deforested for narcotics, land speculation, and cattle (p. 125). A population of this species was recently recorded for the first time at two localities at the Catatumbo-Barí National Park in the Colombian-Venezuelan border, extending the previous species' range from the east slope of the Serranía de Perijá southwards (Avendaño in litt).

Summary of Factor A

Habitat loss, human encroachment, and conversion to agriculture are the main threats acting on the species throughout its range. These threats are exacerbated by an inability by range country governments to adequately manage and monitor the species (see discussion under Factor D, below). South America had the largest net loss of forest area of all continents between 2000 and 2005 (Mosandl *et al.* 2008, p. 38), with a net loss of 4.3 million ha per year. Although specific, detailed information about this species' remaining occupied habitat status is not available for each country, we know that much of this species' habitat has been lost through conversion of land to farming, forestry, or other activities (Bonilha 2008, p. 17; Etter *et al.* 2006, p. 369; Renton 2004, p. 13). Conversion of habitat to soy plantations is now considered to be one of the principal causes of Amazon deforestation. Deforestation may already have destroyed as much as 1.2 million ha (3 million ac) in the Amazon. This, combined with pressures of capture for the pet trade, has severely impacted the wild population of military macaws. Studies have shown that over time, resident bird diversity generally declines as forest fragments become smaller (Turner 1996, pp. 202, 206).

As with most parrots, the military macaw requires large areas of suitable habitat, including large trees or other nesting cavities for nesting, feeding, and roosting as well as food sources. Logging is a common form of habitat loss that affects this species (Bonilla-Ruz 2006, p. 45). Deforestation via conversion of land to agricultural use is a threat to military macaws because it directly eliminates forest habitat, removing the trees that support the species' nesting, roosting, and dietary requirements. It also results in fragmented habitat that isolates military macaw populations, potentially compromising the genetics of these populations through inbreeding depression and genetic drift (Lande 1995, pp. 787–789; Gilpin and Soulé 1986, p. 27). We do not know the exact extent of deforestation in the range of the military macaw. However, the best available information indicates that deforestation continues to occur and affect the species throughout its range, despite protections that are in place.

Currently the population of military macaws is extremely small (likely a few thousand individuals), those populations are severely fragmented, and its suitable habitat is becoming increasingly more scarce. Therefore, based on the best available scientific and commercial information, we find that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the military macaw now and in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The trade in wild parrots is common in some areas of South America (Gastañaga *et al.* 2011, entire; Cantú-Guzmán *et al.* 2008, entire). In its Red List assessment, the IUCN indicates that the two major threats to the military macaw are habitat loss and capture for the domestic pet trade (IUCN 2011, p. 1). Many reports indicate that poaching for the pet trade is still a problem for parrot species, particularly in poorer countries (Herrera and Hennessey 2007, entire; Dickson 2005, p. 548). For perspective, in the United States, captive-bred specimens of this species were recently found offered for sale for $699 (Basile 2010, p. 2). In 2006, four military macaws were advertised for sale with an average sale price of

$850 (Cantú-Guzmán *et al.* 2008, p. 72). Although the scope of the illegal trade in the military macaw is unknown, poaching can be a lucrative and relatively risk-free source of income (Dickson 2005, p. 548).

A high percentage of birds die during the process of capturing from the wild, transporting, and selling them. Younger birds die at a higher rate than adult birds, and the younger birds are more desirable. Because most of these activities are illegal, it is difficult to accurately determine the actual mortality rate, but estimates vary between 31 and 90 percent (Weston and Memon 2009, p. 79; Cantú-Guzmán *et al.* 2007, pp. 7, 20, 22, 55, 60). Wild harvest can destroy pair bonds, remove potentially reproductive adults from the breeding pool, and have a significant effect on small populations (Kramer and Drake 2010, p. 11). Military macaws mate for life, are long-lived, and have low reproductive rates. These traits make them particularly sensitive to the impacts of their removal from the wild (Lee 2010, p. 3; Thiollay 2005, p. 1,121; Wright *et al.* 2001, p. 711). These activities adversely affect a species' population numbers (Pain *et al.* 2006, p. 322).

Although poaching continues to occur for the pet trade, it has been found to be significantly lower at protected sites (Pain *et al.* 2006, pp. 322–328; Wright *et al.* 2002, p. 719). Other reports have found that national or local protection, particularly when local communities are actively involved in conservation efforts, can successfully reduce nest take (Pain *et al.* 2006, p. 328; Chassot *et al.* 2006, pp. 86–87). Gonzalez (2003, pp. 437–446) found evidence of poaching, particularly during nesting seasons, in the Pacaya-Samiria National Reserve, a protected area in the Loreto Department, Peru, during his 1996–1999 study. However, he also found that poaching decreased during the 1998 harvest season (Gonzalez 2003, p. 444), which he attributed to increased numbers of birds confiscated by regional authorities, which may have subsequently discouraged poaching (also see Factor D, below).

A related factor is the destruction of trees in this species' habitat due to poaching. This species primarily depends on tree-cavity nests as its habitat. Not only does nest poaching negatively affect this species by reducing the population size and the number of birds available to reproduce, it also in some cases destroys this species' habitat. Several studies have found that poachers will cut down trees to remove nests. A study conducted in the late 1990s found that in some cases in Peru, poachers cut down the nesting tree in order to access the nestlings (Gonzalez 2003, p. 443). They also were observed "hacking" open the nest cavities to remove chicks (Bergman 2009, pp. 6–8; Low 2003, pp. 10–11). An average of 21 nests was destroyed per poaching trip (Gonzalez 2003, p. 443). Nest destruction was also reported by Bergman in Ecuador in 2009 (pp. 6–8).

The military macaw was listed in CITES Appendix II, effective June 6, 1981, and was transferred to CITES Appendix I, effective October 21, 1987. Most of the international trade in military macaw specimens consists of live birds. Data obtained from the United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database show that during the nearly 6 ½ years that the military macaw was listed in Appendix II, a total of 1,034 military macaw specimens were reported to UNEP–WCMC as (gross) exports. Of those 1,034 specimens, 1,019 were live birds and 15 were feathers. In analyzing these data, it appears that several records may be over-counts due to slight differences in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of military macaw specimens in international trade during this period was 973, including 958 live birds and 15 feathers. Fourteen of the live birds were captive-bred, and the others were reported with the source unknown. Exports from range countries included: 364 live birds from Bolivia; 320 from Mexico; 11 from Ecuador; 4 from Venezuela; and 1 from Argentina.

During the more than 22 years following the transfer to Appendix I (October 21, 1987 through December 31, 2009, the last year for which complete data are available), the UNEP–WCMC database shows a total of 1,523 military macaw specimens as (gross) exports, including 1,226 live birds, 190 scientific specimens, 105 feathers, 1 body, and 1 trophy (UNEP–WCMC trade database, accessed July 12, 2011). As noted above, it appears that some records may be over-counts due to differences in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of live military macaws in international trade during the 22-year period was 1,119. Of those 1,119 birds, 840 were captive-bred or captive-born, and 119 were reported as wild. The source of the remaining live birds is unknown. Exports from range countries included: 54 live birds from Mexico; 10 from Argentina; 4 from Venezuela; 2 from Colombia; and 1 from Peru. Annual quantities exported ranged from a low of 14 live birds during 2006, to 122 live birds (including 80 exported from South Africa) in 2009. Since 2004, none of the exports from range countries has been reported as wild origin.

Argentina, Bolivia, Ecuador, and Mexico

In Argentina, Ecuador, and Venezuela, there is little to no information available about overutilization. International trade has diminished, but local trade continues to occur. In Bolivia, a report published in 2009 indicated that of 17,609 birds (including military macaws) documented in the market studied in Department of Santa Cruz (not far from the range of this species), 64 percent of the birds were found to be adults captured in the wild. Ninety percent (24,707) of the birds were found to be from the Department of Santa Cruz. A total of 2,604 individuals were from the Department of Tarija, 176 from the Department of Beni, 20 from Peru, and 12 from Brazil (Herrera and Hennessey 2009, p. 233). The report indicated that most parrots (some of which were military macaws) were locally sold, and found that 23,306 were in the city of Santa Cruz, and 4,156 were sent to Cochabamba.

In Mexico, the military macaw is reportedly one of the most sought-after species in the illegal pet bird trade (Cantú-Guzmán *et al.* 2007, p. 38), and poaching remains a concern. In 1995–2005, it was the fifth most seized Mexican psittacine species by Mexico's Environmental Enforcement Agency, becoming the fourth most seized psittacine species in 2007–2010 (p. 52). As an example, at a sinkhóle in El Cielo Biosphere Reserve; a population of approximately 50 birds was decimated by poaching in the 1980s (Aragón-Tapia in litt. 1989 in Snyder *et al.* 2000, p. 125). In many areas, it nests in relatively inaccessible cavities on cliff walls, which provides some protection against the pressures of nest poaching. However, nest poaching is a severe threat in Jalisco and Nayarit, where the species nests in tree cavities (Contreras-González *et al.* 2009, p. 43; Renton in litt. 2007 and Bonilla in litt. 2007 in BLI 2011, pp. 1–2). Between 2005 and 2006 in Mexico, five military macaws were found for sale, and the average price was $373 (Cantú-Guzmán *et al.* 2007, p. 76).

Local residents in Argentina indicated that young chicks are removed "for foreigners" but also noted that it is extremely difficult due to the difficulty in accessing the species' preferred nesting sites and the aggressiveness of the macaws (Navarro *et al.* 2008, pp. 7,

9). Additionally, in Mexico and Ecuador, indigenous communities have used military macaw feathers for ceremonial and medicinal practices. However, NGOs are working with these communities to obtain macaw feathers from aviaries so that the indigenous people will not hunt the macaws (Renton 2004, p. 14).

Colombia

This species and other *Ara* macaws are occasionally hunted by indigenous people in Colombia. In one study, in the Catatumbo-Barí National Park, hunting was found to be concentrated around the 15 indigenous communities within the 160,000-ha (395,369-ac) park (Avendaño 2011). In 2004, in a cliff-nesting location along the Cauca River, Colombia, threats to this species included poaching and loss of foraging trees (Flórez & Sierra 2004, pp. 2–3). They found that at the Cauca River site, it was common for some people to remove hatchlings from the nests and sell between 20 to 30 chicks per year on the black market (p. 3). To counteract these activities, a local awareness campaign was initiated (Flórez & Sierra 2004, pp. 2–3). As a result of this project, 3,000 Hura crepitans trees (a species used by the military macaw) were planted by the local communities, and the awareness campaign appeared to be effective. Researchers do not believe that hunting pressure is a serious short-term threat. However, local education and awareness programs generally need to be ongoing and long-term for them to be effective, and the local communities need to be aware of the benefits of conserving species in the wild, as well as have alternative sources of income (i.e., income other than that derived from poaching).

Peru

A recent study in Peru examined nest poaching and illegal trade of parrots, including the reasons for poaching, and the methods, seasons, and locations where the sale and actual poaching of parrots occurred. This study found that this species is still being poached in the wild (Gastañaga *et al.* 2011, pp. 79–80), even in protected areas and despite national protections in place. During the 2007–2008 study, eight military macaws were found for sale in two out of eight markets surveyed in Peru (p. 79). Seven of these birds were found in the Amazonian lowland city, Pucallpa (p. 80). The study also found that where protections and enforcement have been implemented such as in Cusco, there were no parrots for sale in markets. This indicates that although it still continues, poaching is becoming less frequent due to involvement by NGOs, minimal international demand for the species, and enforcement by authorities.

Summary of Factor B

Among birds, parrots are the group most subject to commercial trade (Hutton *et al.* 2000, p. 14). Parrots have suffered a disproportionate number of extinctions, in part due to their desirability as pets. Conservation efforts by the various entities working to ensure long-term conservation of the military macaw may result in its population slowly increasing; however, it is likely that the population is still declining. Even though the military macaw is listed as an Appendix–I species under CITES and laws have been established within the range countries to protect this species, we are still concerned about the illegal capture of this species in the wild. Despite regulatory mechanisms in place and restricted international trade, poaching is lucrative and continues to occur. Additionally, because each population of military macaws is small, with usually fewer than 100 individuals, poaching is likely to have a significant effect on the species. Based on the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the military macaw throughout its range.

C. Disease or Predation

Disease

Studies of macaws indicate that this species is susceptible to many bacterial, parasitic, and viral diseases, particularly in captive environments (Kistler *et al.* 2009, p. 2,176; Portaels *et al.* 1996, p. 319; Bennett *et al.* 1991). Viral diseases seem to be more prevalent and subsequently more studied in parrots than bacteria and parasites. Psittacines are prone to many viral infections such as retrovirus, pox virus, and paramyxo virus, and captive-held birds seem particularly susceptible (Gaskin 1989, pp. 249, 251, 252). A highly fatal disease, Pacheco's parrot disease, is also caused by a virus (Simpson *et al.* 1976, p. 218). After infection from this virus, death occurs suddenly without apparent sign of sickness other than some mild nasal discharge and lethargy (Simpson *et al.* 1976, p. 211). However, as transmission of this disease is mainly through nasal discharge and feces, it is less likely to happen in open habitat in the wild than in a confined aviary, particularly because in the wild this species has been observed to alternate nest sites based on food availability (Chosset *et al.* 2004, pp. 35–39). Another disease, proventricular dilatation disease (PDD), may be one of the worst diseases known to affect parrots (Kistler *et al.* 2008, p. 2). PDD has been documented in several continents in more than 50 different parrot species and in free-ranging species in at least five other orders of birds (Kistler *et al.* 2008, p. 2). It is not clear if some diseases observed in birds in captivity also occur in the wild with the same frequency. However, because the populations of military macaws are small and widely distributed, disease is less of a concern because diseases tend to be more easily transmitted between individuals within close range, and wild birds disperse and are not constantly in close proximity. Also, captive conditions in aviaries make birds more susceptible to disease where the stress of confinement combined with inadequate diet can reduce the ability of birds to fight disease.

We have no evidence of significant adverse impacts to wild populations of military macaws due to disease. Disease is a normal occurrence within wild populations. There is no indication that disease occurs to an extent that it is a threat. Based on the best available scientific and commercial information, we find that disease is not a threat to the military macaw in any portion of its range now or in the future.

Predation

Eggs and chicks are more susceptible to predation than adult macaws (Arizmendi 2008, p. 44). Chicks and eggs are particularly susceptible to predation by snakes (Arizmendi 2008, p. 44), but military macaws select their nests where they are likely to have a high level of reproductive success. Because military macaws generally construct their nests in high locations such as canyon cliffs, snake predation is less of a concern because snakes need tree canopy or vines to climb in order to gain access to eggs and chicks.

Other predators known to consume this species' eggs include iguanas, red-tailed hawks (*Buteo jamaicensis*), turkey vultures (*Carthates aura*), and some mammals (Arizmendi 2008, p. 44). In the Sabino canyon, iguanas were observed near the nesting sites. Researchers suggested that a predator control program here would benefit the macaws (Arizmendi 2008, p. 45). Macaws frequently exhibit alarmed behavior when red-tailed hawks and turkey vultures approach their nests (Arizmendi 2008, p. 44). In Argentina, a flock of parrots was attacked by a pair of peregrine falcons (*Falco peregrinus*),

which also nest in ravines (Navarro *et al.* 2008, p. 6). However, although parrots and falcons can be combative, the peregrine falcon, which normally consumes small mammals and birds, is not thought to be a natural predator of the military macaw (Bradley *et al.* 1991, p. 193). Due to its large size and careful nest site selection, the military macaw is less susceptible to predation by both land and aerial predators (Floréz and Sierra 2004, pp 2–3). However, even limited predation is still a concern in part because removal of potentially reproductive adults from the breeding pool can have a significant effect on small populations by destroying macaw mating pair bonds (Kramer and Drake 2010, p. 11). Additionally, studies on similar species in similar Andean habitats indicate that vulnerability to predation by generalist predators increases with increased habitat fragmentation and smaller patch sizes (Arango-Vélez and Kattan 1997, p. 140). Because each population of military macaws is small, with usually fewer than 100 individuals, and because this species mates for life, even low levels of predation are likely to have a significant effect on the species.

Summary of Factor C

Diseases associated with military macaws in the wild are not well documented. Although there is evidence that diseases occur in parrots in the wild, we found no information that diseases affect this species to the degree that they are negatively impacting this species in the wild. Because the populations are distributed across such a large area, these populations have a built-in resiliency against impacts from disease if one population is affected by a disease outbreak. Conversely, although disease in the wild is not a concern, predation does remain a concern; there is evidence that predation on this species occurs often enough that it can have a significant impact. Because of the species' small and declining population size, tendency to mate for life, low reproductive capacity, and existence in isolated habitat fragments, even minimal predation renders the species more vulnerable to local extirpations. Therefore, we find that predation, compounded by ongoing habitat loss and poaching, is a threat to the military macaw.

D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms to protect a species could potentially fall under categories such as regulation of trade, wildlife management, parks management, or forestry management. We are primarily evaluating these regulatory mechanisms in terms of parks because this is where this species generally occurs. Regulatory mechanisms could be at the local, national, or international levels.

International Wildlife Trade (CITES)

A specimen of a CITES-listed species may be imported into or exported (or reexported) from a country only if the appropriate permit or certificate has been obtained prior to the international trade and it is presented for clearance at the port of entry or exit. The Conference of the Parties (CoP), which is the decision making body of the Convention and comprises all its member countries, has agreed on a set of biological and trade criteria to help determine whether a species should be included in Appendix I or II. The military macaw is listed in Appendix I. For Appendix-I species, both an export permit or reexport certificate must be issued by the country of export and an import permit from the country of import must be obtained prior to international trade. An export permit for species listed in either Appendix I or II may only be issued if the country of export determines that:

- The export will not be detrimental to the survival of the species in the wild (CITES Article III(2) and Article IV);
- The specimen was legally obtained according to the animal and plant protection laws in the country of export;
- For live animals or plants, that they are prepared and shipped for export to minimize any risk of injury, damage to health, or cruel treatment; and
- For Appendix I species, an import permit has been granted by the importing country.

Except in specific scenarios for approved captive-breeding programs, the import of an Appendix-I species requires the issuance of both an import and export permit. Import permits are issued only after the importing country determines that it will not be used for primarily commercial purposes (CITES Article III(3)) and that the proposed recipient of live animals or plants is suitably equipped to house and care for them. Thus, with few exceptions, Appendix-I species cannot be traded for commercial purposes.

The CITES Treaty requires Parties (member countries) to have adequate legislation in place for its implementation. Under CITES Resolution Conference 8.4 (Revised at CoP15) and related decisions of the CoP, the National Legislation Project evaluates whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2011a). In reviewing a country's national legislation, the CITES Secretariat evaluates factors such as:

- Whether a Party's domestic laws prohibit trade contrary to the requirements of the Convention,
- Whether a Party has penalty provisions in place for illegal trade, and if they have designated the responsible Scientific and Management Authorities, and
- Whether a Party's legislation provides for seizure of specimens that are illegally traded or possessed.

The CITES Secretariat has determined that the legislation of Argentina, Colombia, Mexico, and Peru is in Category 1, meaning they meet all the requirements to implement CITES. Bolivia, Ecuador, and Venezuela were determined to be in Category 2, with a draft plan, but not enacted (*http://www.cites.org*, SC59 Document 11, Annex p. 1). This means the Secretariat determined that the legislation of Bolivia, Ecuador, and Venezuela meet some, but not all, of the requirements for implementing CITES. Based on the decrease in reported international trade, CITES and the range countries for this species have effectively controlled legal international trade of this species. Therefore, we find CITES is an effective mechanism for preventing overexploitation for international trade in this species.

Parks and Habitat Management

We are focusing our evaluation of the potential threats to this species primarily to parks for the following reasons. Most suitable habitat, primary forest, only remains in these protected areas. The best available information suggests that this species is now mostly found in protected areas such as parks, in part because this is where suitable habitat remains for the species. Additionally, the majority of the information available regarding the potential threats to the species pertains to the parks, where the species is usually found. Our rationale is supported by Cowen, who noted that encounter rates for large macaw species were generally higher in primary forests (2008, p. 15), which tend to be located in areas with protected status. Throughout this species' range, we found that many of the threats that occur to this species are the same or similar. Threats generally consist of various forms of habitat loss or degradation. Each range country for this species has protections in place, but for reasons such as limited budgets and limited enforcement capabilities, the laws and protections are generally not able to adequately protect the species.

Our analysis of regulatory mechanisms is discussed essentially on a country-by-country basis, beginning with Bolivia, and is summarized at the end.

Research has found that tropical parks have been surprisingly effective at protecting ecosystems and species within boundaries designated as parks or other protected status despite underfunding and pressures for resources (Oliveira *et al.* 2007, p. 1,235; Bruner *et al.* 2001, p. 126; Terborgh 1999, entire). Bruner's study found that protected areas are especially effective in preventing land clearing. It found that in 40 percent of parks, land that had formerly been under cultivation and that was incorporated into park boundaries had actually recovered. This subsequently led to an increase in vegetative cover. The study also found that 83 percent of parks were successful at mitigating encroachment (Bruner *et al.* 2001, p. 125). It concluded that the conditions inside the parks were significantly better than in their surrounding areas (Bruner *et al.* 2001, p. 125). Oliveira *et al.* found that forests in conservation units were four times better at protecting against deforestation than unprotected areas (2007, p. 1,235). However, despite these protections, this species has experienced threats such that their populations are now so small (generally fewer than 100 in each population) that any pressure now has a more significant effect. Parks, without management, are often insufficient to adequately protect the species. Conditions in specific parks are discussed below.

Argentina

In 2007, Argentina enacted a law mandating minimum standards for the environmental protection of native forests (Ley de Bosques). However, the federal government has not fully enforced the law, and provincial governments are not in full compliance with it (DiPaola et al. 2008, p. 2). Argentina lacks adequate protections of its natural environments; there is a lack of environmental awareness and commitment from the government to adequately protect its resources (FAO 2007, pp. 43–44, 59–60). Provinces usually allow landowners to decide whether to maintain forest cover or deforest the land. The absence of a serious land use planning strategy, particularly during the past 20 years, has led to significant habitat degradation (FAO 2007, p. 60). The threat to native forests has remained particularly high in the Salta Province. As a result, a coalition of indigenous communities and nongovernmental organizations filed for injunctive relief in Argentina's highest court to attempt to combat deforestation (DiPaola et al. 2008, p. 2). In this case, the court mandated deforestation activities to be halted pending the completion of a cumulative environmental impact study. The decision forced the Salta Province to comply with the deforestation moratorium imposed by the Forestry Law, and pressured the Province to comply with the other key provision of the law by completing an environmental land use plan (DiPaola et al. 2008, p. 2). Although the Forestry Law is in place and the court case has set a precedent for compliance with this law, the area where this species occurs in Argentina to the best of our knowledge remains largely unprotected (Navarro et al. 2008, pp. 7, 9). However, we do not know how this area is affected by these activities, nor what regulatory mechanisms are in place here with respect to this species and its habitat.

Bolivia

This species primarily inhabits the parks and protected areas in Bolivia's Andean region (Herzog 2011, pers. comm.). National parks are intended to be strictly protected; however, some areas where the species occurs are also designated as areas of integrated management, which are managed for both biological conservation and the sustainable development of the local communities. Bolivia attempts to balance natural resource uses; however, it is one of the poorest countries in South America (MacLeod 2009, p. 6; CIA World Factbook, accessed December 6, 2011), and subsequently has competing priorities. As of 2005, Bolivia had 5 national parks, 6 national park and integrated management natural areas, 1 national park and indigenous territory (or communal lands), 4 national reserves, 2 biosphere reserves, and 3 integrated management natural areas (ParksWatch 2005, p. 1). These make up Bolivia's National System of Protected Areas ((SNAP) Servicio Nacional de Areas Protegidas). Below are the designations and their relevant categorizations of protections (eLAW 2003, p. 3).

(1) Park, for strict and permanent protection of representative ecosystems and provincial habitats, as well as plant and animal resources, along with the geographical, scenic and natural landscapes that contain them;

(2) Sanctuary, for the strict and permanent protection of sites that house endemic plants and animals that are threatened or in danger of extinction;

(3) Natural Monument, to preserve areas such as those with distinctive natural landscapes or geologic formations, and to conserve the biological diversity contained therein;

(4) Wildlife Reserve, for protection, management, sustainable use, and monitoring of wildlife;

(5) Natural Area of Integrated Management, where conservation of biological diversity is balanced with sustainable development of the local population; and

(6) "Immobilized" Natural Reserve, a temporary (5-year) designation for an area that requires further research before any official designations can be made and during which time no natural resource concessions can be made within the area (Supreme Decree No. 24,781 1997, p. 3).

The foundation of Bolivia's laws is largely based on Bolivia's 1975 Law on Wildlife, National Parks, Hunting, and Fishing (Decree Law No. 12.301 1975, pp. 1–34), which has the fundamental objective of protecting the country's natural resources. This law governs the protection, management, utilization, transportation, and selling of wildlife and their products; the protection of endangered species; habitat conservation of fauna and flora; and the declaration of national parks, biological reserves, refuges, and wildlife sanctuaries, regarding the preservation, promotion, and rational use of these resources (Decree Law No. 12,301 1975, pp. 1–34; eLAW 2003, p. 2). Later, Bolivia passed an overarching environmental law in 1992 (Law No. 1.333 1992), with the intent of protecting and conserving the environment and natural resources. Studies have shown that protected areas have been successful in providing protection from poaching, logging, and other forest damage, especially when compared to unprotected areas (Lee 2010, p. 3; Killeen *et al.* 2007, p. 603; Oliveira *et al.* 2007, p. 1,234; Asner 2005, p. 480; Ribeiro *et al.* 2005, p. 2; Gilardi and Munn 1998, p. 641). However, pressures on the parks' resources are increasing; these are described below.

Within the Greater Madidi-Tambopata Landscape, activities that could negatively affect this species occur, and there are competing priorities within these protected areas. Madidi is divided into three contiguous areas, with two different management categories: A strictly protected National Park in two sections which total 1,271,000 ha (3,140,709 ac), and a natural integrated management area with 624,250 ha (1,542,555 ac), where conservation and sustainable development of the local communities is the main purpose (Conservation Strategy Fund (CSF)

2006, p. 29). The most significant activities that are having a negative impact or could in the future in this area are the construction of a highway within Madidi, mining for natural resources such as gold, drilling for oil, and a planned hydroelectric dam (ParksWatch 2011b, p. 8; *http://www.amazonfund.eu/art-oil-madidi.html*, accessed September 13, 2011; Chavez 2010, pp. 1–2). There is limited legal hunting of this species occurring here, but in the areas surveyed, this species was described as common and not exploited (Hosner *et al.* 2009, p. 226). Timber extraction still occurs in some areas (World Land Trust 2010, p. 1). In the rainforest and foothill forest of Serranía Sadiri within Madidi, roads in the late 1990s spurred a rise in the unsustainable logging of the area's mahogany trees, which were the most valuable tree at the time (World Land Trust 2010, pp. 1–2). Within the Apolobamba protected area, uncontrolled clearing, extensive agriculture, grazing, and "irresponsible" tourism are ongoing (Auza and Hennessey 2005, p. 81). Habitat degradation and destruction from grazing, forest fires, and timber extraction are ongoing in other protected areas, such as Tunari National Park (Department of Cochabamba), where suitable habitat exists for this species (De la Vie 2004, p. 7).

Bolivia's national policy is to decentralize decision making, and responsibility for land planning and natural resource management is increasingly shifting to local and regional governments (Wildlife Conservation Society (WCS) 2009, pp. 2–5). However, the decentralization process is occurring without sufficient personnel, staff training, and operational funds. There is little information as to the actual protections that Bolivia's laws and protected areas confer to military macaws, despite the laws in place at the national level for its wildlife. Threats to the species and its habitat include unsustainable land use practices, illegal logging, mining, road building, oil extraction, illegal animal trade, and hunting, which are all still occurring within this species' habitat (MacLeod 2009, p. 6; WCS 2009, pp. 2–5). The mechanisms in place are inadequate at reducing the threat of habitat destruction and human disturbance within these protected areas.

Colombia

The Colombian Government has enacted and ratified numerous domestic and international laws, decrees, and resolutions for managing and conserving wildlife and flora. Colombia currently has 54 areas that have protected status (El Sistema Nacional de Areas Protegidas (SINAP); National Natural Parks of Colombia 2011). Of those, 33 have been declared Important Bird Areas (IBAs). The protected area designations are as follows: National parks (parques nacionales), flora and fauna sanctuaries (santuarios de fauna y flora), flora sanctuaries (santuarios de flora), nature reserves (reserva natural), and unique natural areas (área natural única) (Law 165 of 1994). Small populations of this species occur in several reserves and protected areas in Colombia (Strewe and Navarro 2003, p. 32). These protected areas in Colombia offer various degrees of protection to the species.

In 2003, conservation priorities were identified for its bird species, a conservation corridor was designed, and a habitat conservation strategy within the San Salvador valley was developed (Strewe and Navarro 2003, p. 29). The private Buena Vista Nature Reserve was established and protects approximately 400 ha (988 ac) of tropical wet lowland forest and wet premontane forest on the northern slope of the Sierra Nevada. It encompasses extensive primary forests along an altitudinal gradient of 600 to 2,300 m (1,968 to 7,545 ft) and forest patches and secondary forest at elevations between 450 to 600 m (1,476 to 1,968 ft). The reserve is adjacent to the Sierra Nevada de Santa Marta National Park and the Kogi-Malayo Indian reserve (Strewe and Navarro 2003, p. 29).

Resource management in Colombia is highly decentralized. Colombian environmental management has been divided between the national and regional levels since the 1950s. Governmental institutions responsible for oversight appear to be under resourced (ITTO 2006, p. 222) and unable to adequately manage species such as the military macaw. Resources are managed within local municipalities by one of 33 "Autonomous Regional Corporations" known as CARs (Corporaciones Autónomas Regionales) (Blackman *et al.* 2006, p. 32). CARs are described as corporate bodies of a public nature, endowed with administrative and financial autonomy to manage the environment and renewable natural resources, implemented through Law 99 of 1993 (p. 32). Each department (analogous to U.S. state designations) within Colombia is managed by a separate local entity. These corporations grant concessions, permits, and authorizations for forest harvesting (ITTO 2006, p. 219).

As of 2005, 40 percent of Colombia's public resources were managed by local municipalities, making Colombia one of the most decentralized countries in terms of forestry management in Latin America (Blackman *et al.* 2006, p. 36). Monitoring of resource use and forest development authorized by these corporations is conducted mostly by local nongovernmental organizations. The International Tropical Timber Organization (ITTO) considers the Colombian forestry sector to be lacking in law enforcement and on-the-ground control of forest resources, with no specific standards for large-scale forestry production, no forestry concession policies, and a lack of transparency in the application of the various laws regulating wildlife and their habitats (ITTO 2006, p. 222). Consequently, there is currently no effective vehicle for overall coordination of species management for multijurisdictional species such as the military macaw. Fundación ProAves developed a conservation plan for 2010 to 2020 for several parrot species, including the military macaw (Botero-Delgadillo and Páez 2011, p. 7). However, it is unclear if or when it will be adopted by the Government of Colombia.

Additionally, despite protections, forest loss continues almost unabated in the mountains of the Sierra Nevada, demonstrating that formal protections and regulatory mechanisms are inadequate. In this area, El Congo Reserve currently may be the only secure nesting site for the military macaw, but it is too small (40 ha; 99 ac) to conserve viable populations.

Efforts are occurring in Colombia to protect and monitor its species, although they do not appear to be adequate to combat the threats to this species. One management tool that Colombia has recently developed is a bird-watching strategy in these protected areas to monitor and report on bird species such as the military macaw, in conjunction with ecotourism (National Natural Parks of Colombia 2011). Despite the efforts in place, there is a lack of information available about the status of this species and its habitat in Colombia. There is no clear information about the status of the species in Colombia; particularly its population trend. We are unable to determine that this conservation strategy will sufficiently mitigate threats to the military macaw, nor are we able to find that the regulatory mechanisms in place in Colombia are adequate. The species population is small in Colombia, and threats to its habitat still exist.

Ecuador

In Ecuador, the military macaw is considered to be very rare (Arcos-Torres and Solano-Ugalde 2008, p. 72). It has been observed in the areas of Sumaco- and Zamora-Chinchipe (Youth 2009, p. 1; Snyder *et al.* 2000, p. 125) and recently at Kichwa River Reserve (Reserva Kichwa Río), within the Gran Sumaco Biosphere Reserve Guacamayos (Arcos-Torres and Solano-Ugalde 2008, p. 72). This species is categorized as endangered "en peligro de extinción" (Arcos-Torres and Solano-Ugalde 2008, p. 69) in Ecuador. It is protected by Decree No. 3,516 of 2003 (Unified Text of the Secondary Legislation of the Ministry of Environment) (EcoLex 2003b, pp. 1–2 and 36). This decree summarizes the laws governing environmental policy in Ecuador and provides that the country's biodiversity be protected and used primarily in a sustainable manner.

Habitat destruction is ongoing and extensive in Ecuador (Mosandl *et al.* 2008, p. 37; Butler 2006b, pp. 1–3; FAO 2003b, p. 1). Unsustainable forest harvest practices likely continue to impact the military macaw's habitat. In 2004, Ecuador Law No. 17 (Faolex 2004, pp. 1–29) amended the Forest Act of 1981 (Law No. 74) to include five criteria for sustainable forest management: (i) Sustainable timber production; (ii) the maintenance of forest cover; (iii) the conservation of biodiversity; (iv) co-responsibility in management; and (v) the reduction of negative social and environmental impacts (ITTO 2006, p. 225; Aguilar and Vlosky 2005, pp. 9–10). In 2001, the Ecuadorian government worked with the private sector to develop a system of monitoring and control of forest harvest practices. However, in 2003, the Supreme Court of Ecuador declared the control system unconstitutional, and new control systems were being developed (ITTO 2006, p. 225). Approximately 70 percent of the forest products harvested are harvested illegally, or are used as fuel wood, or are discarded as waste (ITTO 2006, p. 226; Aguilar and Vlosky 2005, p. 4). Because the extractive harvesting industry is not monitored, the extent of the impact is unknown; however, the best available information indicates that habitat degradation negatively affects this species in Ecuador.

The Ecuadorian government recognizes 31 different legal categories of protected lands (e.g., national parks, biological reserves, geo-botanical reserves, bird reserves, wildlife reserves, etc.). The colony in Kichwa River Reserve Macaw receives some legal protections by being in a Reserve. However, a study published in 2002 concluded that although 14 percent of Ecuador is categorized as national reserve network (Sierra *et al.* 2002, p. 107), the system does not provide adequate protection for its ecosystems. As of 2006, the amount of protected land (both forested and nonforested) in Ecuador totals approximately 4.67 million ha (11.5 million ac) (ITTO 2006, p. 228). However, only 38 percent of these lands have appropriate conservation measures in place to be considered protected areas according to international standards (i.e., areas that are managed for scientific study or wilderness protection, for ecosystem protection and recreation, for conservation of specific natural features, or for conservation through management intervention) (IUCN 1994, pp. 17–20). The ITTO, as of 2006, considered ecosystem management and conservation in Ecuador, including effective implementation of mechanisms that would protect the military macaw and its habitat, to be lacking (ITTO 2006, p. 229).

Although this colony has persisted for about 150 years (Huatatoca, pers. comm. in Arcos-Torres and Solano-Ugalde 2008, p. 72), it may be affected by logging and the resulting deforestation on nearby land (Arcos-Torres and Solano-Ugalde 2008, p. 72). The best available information indicates that on-the-ground enforcement of Ecuador's laws, oversight of the local jurisdictions, and implementing and regulating activities are ineffective in conserving the military macaw and its habitat in Ecuador. Researchers suggest that the apparent lack of this species in Ecuador is related to lack of existing suitable sites (large areas containing appropriate feeding, nesting, and breeding habitat) for the formation of breeding colonies. The governmental institutions responsible for natural resource oversight in Ecuador appear to be under-resourced, and to our knowledge, there is a lack of law enforcement on the ground. Despite the creation of a national forest plan, the best available information indicates there is a lack of capacity to implement this plan due to inconsistencies in application of regulations, and discrepancies between actual harvesting practices and forestry regulations. These inadequacies have facilitated logging, clearing for agriculture, subsistence farming, and road development. Habitat conversion and alteration are ongoing within Ecuador, including within protected areas.

Mexico

Threatened and endangered species are regulated under the general terms of the General Law of Ecological Balance and Environmental Protection (Ley General del Equilibrio Ecológico y Protección al Ambiente (LGEEPA)), the General Wildlife Law (Ley General de Vida Silvestre (LGVS)), and also under CITES (CEC 2003, unpaginated). NOM–059–ECOL–2001 establishes a list of wildlife species classified as either in danger of extinction (endangered), threatened, under special protection, or probably extinct in the wild (Government of Mexico 2002, p. 6). All use of endangered and threatened species requires a special permit from the Secretariat of the Environment and Natural Resources (Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT). SEMARNAT's main goal is to protect, restore, and conserve its ecosystems and natural resources. Under Mexico's General Wildlife Law, the use of these protected species, including the military macaw, may be authorized only when priority is given to the collection and capture for restoration, repopulation, and reintroduction activities (Comisión Nacional Para El Conocimiento y Uso de la Biodiversidad 2009, unpaginated; CEC 2003, unpaginated).

International trade of Mexico's wildlife is also managed by SEMARNAT. In 2008, Mexico passed Article 60_2 to amend its General Wildlife Law. The article bans the capture, export, import, and reexport of any species of the Psittacidae (parrot) family whose natural distribution is within Mexico (Cantú and Sánchez 2011, p. 1). It allows for authorizations for removal of individuals from the wild to be issued only for conservation purposes, or to accredited academic institutions for scientific research. However, it does not appear to be adequate based on recent investigations of trade of Mexico's native parrot species.

The military macaw falls under the jurisdiction of several other laws in Mexico. The 2003 General Law on Sustainable Forest Management (Ley General de Desarrollo Forestal Sustenable (LGDFS)) governs forest ecosystems in Mexico, including military macaw habitat. This law formalizes the incorporation of the forest sector in a broader environmental framework. Under this law, harvesting of forests requires authorization from SEMARNAT. It also requires that harvesting forests is based on a technical study and a forest management plan (GOM 2010, p. 24). A

number of additional laws complement the 2003 law in regulating forest use. The LGEEPA regulates activities for protecting biodiversity and reducing the impact on forests and tropical areas of certain forest activities; the LGVS governs the use of plants and wildlife found in the forests; the General Law on Sustainable Rural Development (Ley General de Desarrollo Rural Sustentable) provides guidance for activities aimed at protecting and restoring forests within the framework of rural development programs; and the Agrarian Law (Ley Agraria) governs farmers' ability to use forest resources on their land (Anta 2004, in USAID 2011, unpaginated).

Another law regulating portions of the military macaw's habitat is the National System of Protected Natural Areas (Sistema Nacional de Áreas Naturales Protegidas (SINANP)). These protected natural areas are created by presidential decree, and the activities in them are regulated under the LGEEPA, which requires that the protected natural areas receive special protection for conservation, restoration, and development activities (Comisión Nacional de Áreas Naturales Protegidas (CONANP) 2011, unpaginated). These natural areas are categorized as: Biosphere Reserves, National Parks, Natural Monuments, Areas of Natural Resource Protection, Areas of Protection of Flora and Fauna, and Sanctuaries (CONANP 2011, unpaginated). The military macaw is known to occur in several protected areas.

Conservation strategies in Mexico rely heavily on natural protected areas, and biosphere reserves comprise most of the designated protected area in the country (Figueroa and Sanchez 2008, pp. 3324, 3234). The military macaw occurs in or near at least four biosphere reserves. Although some areas where this species occurs have protected status, Figueroa and Sanchez (2008, entire) found that, for example, the Sierra Gorda Biosphere Reserve was ineffective (as opposed to effective or weakly-effective). This study specifically evaluated the effectiveness of Mexico's protected areas for preventing land use and land cover change. It assessed the effectiveness of national protected areas (NPAs) by quantifying (1) the rate of change and (2) the total extent of change, between 1993 and 2002, as well as (3) the percentage, in 2002, of areas transformed by human use; transformed areas included agriculture, cultivated and induced pastures, human settlements, and forestry plantations. The rate of change of transformed areas inside each NPA was also compared with that estimated for an equivalent area surrounding the NPA. They selected 69 federal decreed NPAs (out of 160 NPAs decreed in Mexico) that were 1,000 ha (2,471 ac) or larger, which is the minimum area for conserving ecosystems in Mexico (Figueroa and Sanchez 2008, p. 3,225; Ordóñez and Flórez-Villela 1995, p. 11). The study found that, overall, only approximately 54 percent of protected areas, including 65 percent of biosphere reserves, were effective.

Peru

In Peru, this species is listed as vulnerable under Supreme Decree No. 034–2004–AG (2004, p. 276855), and its protections fall under the jurisdiction of the National Institute of Natural Resources (Instituto Nacional de Recursos Naturales, INRENA). This Decree prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation. The military macaw is thought to occur in at least three areas with protected status in Peru. The Peruvian national protected area system includes several categories of habitat protection (refer to Factor A. National reserves, national forests, communal reserves, and hunting reserves are managed for the sustainable use of resources (IUCN 1994, p. 2). The designations of national parks, sanctuaries, and protection forests are established by supreme decree that supersedes all other legal claim to the land and, thus, these areas tend to provide some form of habitat protection (Rodríguez and Young 2000, p. 330). However, limited information is available with respect to the status of this species in Peru. We do not know if the occurrence of the military macaw within protected areas in Peru actually protects the species or mitigates threats to the species, and to what extent these protections are effective.

Venezuela

In Venezuela, the military macaw is thought to exist in two parks: El Ávila National Park and Henri Pittier National Park. Very limited information about the status of this species is available in Venezuela. Henri Pittier National Park (107,800 ha; 266,380 ac) was declared the first national park in Venezuela in 1937. Henri Pittier National Park is the largest national park of the Cordillera de la Costa (Coastal Mountain Range) region. The principal threats to this park include fire, human encroachment, solid waste buildup, pollution, hunting, and limited resources for effective park management (ParksWatch 2011g, unpaginated). In many cases, the intensity of threats has increased. Prior to 1994, a team of government representatives, NGOs, universities, and aviculturists in Venezuela had developed both an action plan for the conservation of parrots and a book containing information on parrot biology (Morales *et al.* 1994, in Snyder 2000, p. 125). However, currently, it is unclear what conservation initiatives are occurring.

El Ávila National Park (81,800 ha; 202,132 ac in size), is located along the central stretch of the Cordillera de la Costa Mountains in northern Venezuela. The most immediate threats to the park are forest fires and illegal settlements, which occur primarily near Caracas (ParksWatch 2011f, unpaginated). ParksWatch notes that the areas closest to the city have experienced more problems in the more isolated northern slope and eastern sector of El Ávila. Other threats in this park include the presence of nonnative plants and poaching.

Summary of Factor D

In Argentina, Ecuador, Peru, and Venezuela, we recognize that conservation activities are occurring, and that these activities may have a positive effect on the species at the local population level. Parrots, in general, are long-lived with low reproductive rates, traits that make them particularly sensitive to poaching and other threats such as habitat loss (Lee 2010, p. 3; Thiollay 2005, p. 1,121; Wright *et al.* 2001, p. 711). Removal of a few birds from a population of 100 can have a greater effect than removal of a few birds from larger populations. The primary threats to this species historically have been the loss of habitat and capture for the pet trade (Strewe and BLI 2011, p. 1; Navarro 2003, p. 33). Since regulatory mechanisms such as CITES and the WBCA have been put into place, particularly since 1992, much of the legal international trade in the military macaw has declined (see Factor B discussion, above; UNEP–WCMC CITES trade database, accessed September 6, 2011). However, those pressures prior to the military macaw's listing under CITES and the WBCA contributed significantly to the decline in population numbers for this species. Since then, the species' habitat has become fragmented, its range has reduced, and its populations have more difficulty finding suitable habitat.

Each of these countries has enacted laws to protect its wildlife and habitat. However, we are unable to conclude that the regulatory mechanisms in place are adequate. The populations of this species in these four countries likely range from fewer than 100 to a few hundred individuals. There are numerous threats acting on this species;

its populations have severely declined. In some cases, the actual causes of decline may not be readily apparent and a species may be affected by more than one threat in combination. Habitat conservation measures within these range countries do not appear to sufficiently mitigate future habitat losses. Habitat loss and degradation continue to occur within these countries; the best available information does not indicate that the existing regulatory mechanisms have mitigated these threats in the range of this species. Because these populations of this species are very small in these countries, any impact is likely to have a significant impact on the species; therefore, we are unable to conclude that regulatory mechanisms in place for this species and its habitat are adequate.

Bolivia, Colombia, and Mexico have enacted various laws and regulatory mechanisms for the protection and management of this species and its habitat. Although information available is limited, the best evidence suggests that the military macaw exists in small populations in several large protected areas within these countries. As discussed under Factor A, the military macaw prefers primary forests and woodlands and complex habitat that offers a variety of food sources. Its suitable habitat has been severely constricted due to deforestation. In these three countries, there is clear evidence of threats to this species due to activities such as habitat destruction and degradation, poaching, construction of roads, and mining, as well as decreased viability due to small population sizes, despite the regulatory mechanisms in place. We acknowledge that research and conservation programs are occurring in these countries. However, based on the best available information, we find that the existing regulatory mechanisms for these countries are either inadequate or inadequately enforced in order to protect the species or to mitigate ongoing habitat loss and degradation, poaching, and the severe population decline of this species. Habitat conservation measures within these range countries do not appear to sufficiently mitigate future habitat losses.

Based on the best available information, we are unable to conclude that the existing regulatory mechanisms currently in place sufficiently mitigate threats to the military macaw throughout its range. Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the current threats to the continued existence of the military macaw throughout its range now and into the future.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Small Population Size

Small, declining populations can be especially vulnerable to environmental disturbances such as habitat loss (O'Grady 2004, pp. 513–514). In order for a population to sustain itself, there must be enough reproducing individuals and habitat to ensure its survival. Conservation biology defines this as the "minimum viable population" requirement (Grumbine 1990, pp. 127–128). This requirement may be between 500 and 5,000 individuals depending on variability, demographic constraints, and evolutionary history. The military macaw occurs in relatively small populations (ranging from a few pairs to approximately 100 individuals, with the total population size that is likely no greater than a few thousand). The military macaw relies on specific habitat to provide for its breeding, feeding, and nesting. Historically, the military macaw existed in much higher numbers in more continuous, connected habitat. Its suitable habitat is becoming increasingly limited, and its suitable habitat is not likely to expand in the future.

The combined effects of habitat fragmentation and other factors on a species' population can have profound effects and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate populations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). This is especially applicable for a species such as the military macaw that was once wide-ranging. It has lost a significant amount of its historical range due to habitat loss and degradation. Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to other impacts. If this trend continues, its ultimate extinction due to one or more stochastic (random or unpredictable) events becomes more likely. The military macaw's current occupied and suitable range is highly reduced and severely fragmented. The species' small population size, its reproductive and life-history traits, and its highly restricted and severely fragmented range increase this species' vulnerability to other threats.

Climate Change

Consideration of ongoing and projected climate change is a component of our analysis under the ESA. The term "climate change" refers to a change in the mean, variability, or seasonality of climate variables over time periods of decades or hundreds of years (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 78). Forecasts of the rate and consequences of future climate change are based on the results of extensive modeling efforts conducted by scientists around the world (Solman 2011, p. 20; Laurance and Useche 2009, p. 1,432; Nuñez *et al.* 2008, p. 1; Margeno 2008, p. 1; Meehl *et al.* 2007, p. 753). Climate change models, like all other scientific models, produce projections that have some uncertainty because of the assumptions used, the data available, and the specific model features. The science supporting climate model projections as well as models assessing their impacts on species and habitats will continue to be refined as more information becomes available. While projections from regional climate model simulations are informative, various methods to downscale projections to more localized areas in which the species lives are still imperfect and under development (Solman 2011, p. 20; Nuñez *et al.* 2008, p. 1; Marengo 2008, p. 1). The best available information does not indicate that climate change is impacting this species such that it is a threat. After reviewing the best available information, we do not find that changes in climate are impacting this species such that climate change is a threat.

Summary of Factor E

A species may be affected by more than one threat acting in combination. Impacts typically operate synergistically, particularly when populations of a species are decreasing. Initial effects of one threat factor can later exacerbate the effects of other threat factors (Gilpin and Soulé 1986, pp. 25–26). Further fragmentation of populations can decrease the fitness and reproductive potential of the species, which will exacerbate other threats. Lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches. Within the preceding review of the five factors, we have identified multiple threats that may

have interrelated impacts on this species. For example, the species' behavior of not nesting in areas where depredation or disturbance is likely may mean that a nest site is "abandoned" before nesting is even attempted. Thus, the species' productivity may be reduced because of any of these threats, either singularly or in combination. The most significant threats are habitat loss and poaching, particularly because the species has such a small and fragmented population, and it requires a large range and variety of food sources. These threats occur at a sufficient scale so that they are affecting the status of the species now and in the future.

In addition, the species' current range is highly restricted and severely fragmented. The species' small population size, its reproductive and life-history traits, and its highly restricted and severely fragmented range increase the species' vulnerability to adverse natural events and manmade activities that destroy individuals and their habitat. The susceptibility to extirpation of limited-range species can occur for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). Therefore, we find that the species' small population size, in combination with other threats identified above, is a threat to the continued existence of the military macaw throughout its range now and in the future.

Finding and Status Determination for the Military Macaw

We find that this species is endangered based on the above evaluation, and we propose to list this species as endangered due to the threats described above that continue to act on this species. Within the preceding review of the five factors, we identified multiple threats that may have interrelated impacts on the species. For example, the productivity of military macaws may be reduced because of the effects of poaching and habitat loss, which are expected to continue to act on the species in the future. In cases where populations are very small, species mate for life, and birds produce small clutch sizes, these effects are exacerbated. The susceptibility to extirpation of species with small and declining populations can occur for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable (Harris and Pimm 2004, pp. 1,612–1,613). This species exists generally in very small and fragmented populations, usually in areas with some form of protected status in Mexico, Bolivia, Peru, and Colombia, and to a limited extent Ecuador, Venezuela, and Argentina. Its life-history traits (such as mating for life and small clutch size) make it particularly susceptible to extinction because its populations are so small. Based on our review of the best available scientific and commercial information pertaining to the five factors, we found that many of these threats are similar throughout the species' range.

In four of the countries (Argentina, Ecuador, Peru, and Venezuela), the populations are extremely small, and very little information about the status of the species is available in many parts of its range. It is not necessarily easy to determine (nor is it necessarily determinable) which potential threat is the operational threat. However, we believe that these threats, either individually or in combination, are likely to occur at a sufficient geographical scale to significantly affect the status of the species. Additionally, although we do not have precise genetic information about populations throughout this species' range, it is likely that there is some genetic transfer between populations. We believe this based on its demonstrated ability to fly long distances in search of food sources (Chosset and Arias 2010, p. 5): The most significant threat, habitat loss and degradation, is prevalent throughout this species' range. Its suitable habitat has severely contracted, and habitat loss is likely to continue into the future. We do not find that the factors affecting the species are likely to be sufficiently ameliorated in the foreseeable future. Therefore, we find that listing the military macaw is warranted throughout its range, and we propose to list the military macaw as endangered under the ESA.

Species Information for the Great Green Macaw

Taxonomy

The great green macaw (*Ara ambiguus or ambigua,* Linnaeus, 1766; Bechstein, 1811) is in the parrot (Psittacidae) family. It is known by various common names such as lapa verde, Buffon's macaw, Guacamayo verde mayor, Guara verde, and Papagayo de Guayaquil. It occurs as two subspecies. The nominate subspecies, Ara a. ambiguus, occurs from Honduras to north-west Colombia. The subspecies A. a. guayaquilensis occurs in western Ecuador (Rodriguez-Mahecha *et al.* 2002, p. 116; Fjëldsa *et al.* 1987, pp. 28–31). There are believed to be only around 100 individuals of *A. a. guayaquilensis* in two areas in Ecuador. This subspecies has a smaller bill with greener underside of the flight and tail feathers than the nominate subspecies (Juniper and Parr 1998, p. 423). Avibase and ITIS both recognize these subspecies (*http://www.itis.gov and http://avibase.bsc-eoc.org/avibase.jsp*, accessed November 3, 2011).

There is no universally accepted definition of what constitutes a subspecies, and the use of the term subspecies varies among taxonomic groups (Haig and D'Elia 2010, p. 29). To be operationally useful, subspecies must be discernible from one another (i.e., diagnosable) and not merely exhibit mean differences (Patten and Unitt 2002, pp. 28, 34). This element of diagnosability, or the ability to consistently distinguish between populations, is a common thread that runs through all subspecies concepts. All populations or subspecies of Ara ambigua essentially face similar threats, all are generally in the same region (Central and northern South America), and all have small populations. For the purpose of this proposed rule and based on the best available information, we recognize all populations of great green macaws as a single species.

Description

This species ranges between 77 and 90 cm (30 and 35 inches) in length and has a red frontal band above a large black bill, bare facial features with black lines, blue flight feathers on the superior feathers and olive inferior feathers, blue lower back, and orange tail (Juniper and Parr 1998, pp. 423–424). It is the second largest New World macaw. This species is not sexually dimorphic, meaning there are no differences in appearance between males and females of the same species. The great green macaw is very similar in appearance to the military macaw, but the military macaw has more prominent blue coloring on its hind neck, has darker plumage, and is smaller. These two species are also separated geographically.

Range, Observations, and Population Estimates

The great green macaw is patchily distributed in a 100,000-km^2 (38,610-mi^2) area (BLI 2011). In addition to occupying humid tropical forests primarily in Central America (Costa Rica, Honduras, Nicaragua, and Panama), there are small remnant populations in western Ecuador, as well as northern Colombia (Berg *et al.* 2007, p. 1; Chassot *et al.* 2006, p. 7). Although there may be some interaction between

populations, the great green macaw is fragmented into seven isolated populations throughout its distribution due to habitat loss (Monge *et al.* 2009, pp. 159, 174).

Deforestation has reduced this species' habitat and concentrated its population into primarily five areas: the border of Honduras and Nicaragua, the border of Nicaragua and Costa Rica, the Darién region of Panama and Colombia, and two very small populations in Ecuador (Hardman 2010, p. 8; Monge *et al.* 2009, p. 159).

Population estimates were made in the 1990s and early 2000s. The global population is now likely less than 2,500 mature individuals (or less than 3,700 with juveniles included) (Monge *et al.* 2009, pp. 213, 256); however, the actual population is far from clear. In 1993, the population estimate was 5,000 individuals; in 2000, the population was estimated to be between 2,500 and 10,000 birds (BirdLife International 2009a; Rodríguez-Mahecha 2002a). Although historical observations are useful for assessing the range of the species, they may also be biased because surveys may not have sampled randomly. Thus, historical population estimates of this species may not be accurate. Although the population in Costa Rica is increasing, the population continues to be very small (Monge *et al.* 2010, p. 16), and researchers believe that the global population of this species is decreasing (Botero-Delgadillo and Páez 2011, p. 91). Specific information about the range and population estimate for each country is discussed below.

Figure 3. Distribution of Ara ambigua. *BirdLife International 2011.*

Colombia

Historically in Colombia, it was found in the north of the Serranía de Baudó and the West Andes and east to the upper Sinú valley (Snyder *et al.* 2000, pp. 121–123). In the late 1990s, this species was observed in Los Katíos National Park, around Utría National Park in Serranía de Baudó (Salaman in litt. 1997), and the Chocó area of western Colombia (Angehr in litt. 1996 in Snyder *et al.* 2000, pp. 121–123; Ridgley 1982). This species' potential geographical range is 51,777 km^2 (19,991 mi^2), which includes two core areas in Sierra Nevada de Santa Marta and in the center of Antioquia Department of Columbia (Salaman *et al.* 2009, p. 21; Monge *et al.* 2009, unpaginated; Quevado-Gill *et al.* 2006, p. 15). The total Columbian population is currently unclear, but it is now believed to primarily exist in Los Katíos National Park, which borders the Darién region in Panama. It was also recently observed in the area of Sabanalarga, Antioquia (Quevado-Gill *et al.* 2006, p. 15). Even though the largest population is thought to be in the northern Darién border region with about 1,700 adults, researchers believe this is an estimate without a strong basis (Botero-Delgadillo and Páez 2011, p. 91). The populations in Colombia are highly localized, and this number could be an overestimate (Botero-Delgadillo and Páez 2011, p. 91).

Costa Rica

The great green macaw historically inhabited forests along the Caribbean

lowlands of Costa Rica (Chosset *et al.* 2004, p. 32). The population has increased in that area since 1994, when there was an estimate of 210 birds. The population appears to have fluctuated; in 2004, it was estimated that a maximum of 35 pairs were breeding in northern Costa Rica (Chosset *et al.* 2004, p. 32). A survey conducted in 2009 reported an population estimate of 302 in Costa Rica (Monge *et al.* 2009, p. 12); another estimate was that there was a total of 275 birds in Costa Rica in 2010 (Chassot 2010 pers. comm. in Hardman 2010, p. 11).

Approximately 67,000 ha (165,561 ac) of great green macaw breeding territory now remains in Costa Rica (Chun 2008, p. v), which is less than 10 percent of its original suitable habitat (Monge *et al.* 2010, p. 15; Chosset *et al.* 2004, p. 38). Potential great green macaw breeding habitat, excluding Ecuador, is defined by the density of almendro trees, which this species uses for its primary feeding and nesting substrate. Based on the assumption that great green macaw breeding pairs require 550 ha (1,359 ac) of non-overlapping habitat, Chun postulated that northern Costa Rica could support about 120 breeding macaw pairs (2008, p. 110). Chun notes that even the forested areas identified as individual "patches" through a geographic information system (GIS) program do not necessarily represent areas of forest with continuous canopy cover (indicating complex, fairly undisturbed habitat that is likely to contain nutritional needs for this species). Although these patches of forest are technically connected at some level, they are for the most part highly porous and discontinuous, and no analysis was performed to filter out stands that might be porous or discontinuous. There are some areas in its potential range that are above the elevation threshold for almendro trees, and do not meet the criteria for suitable habitat.

Ecuador

In Ecuador, there may be only potentially one viable population. This population exists in the Cerro Blanco Protected Forest, which is 6,070 ha (15,000 ac) outside of Guayaquil in Guayas Province (Villate *et al.* 2008, p. 19). This population is believed to be approximately 10 individuals; an estimate of 60 to 90 individuals in Ecuador may be optimistic (Horstman pers comm. in Hardman 2010, p. 12). This is a decline from 1995, when the population was estimated to be approximately 100 birds in the Esmeraldas Province (Waugh 1995, p. 10). Between 1995 and 1998, some individuals were observed in the Playa de Oro area along the Santiago River (Jahn 2001, pp. 41–43). In 2002, Ecuador's population was estimated to be between 60 and 90 individuals (Monge *et al.* 2009, p. 256), but the population was reported to be rapidly decreasing. In 2005, the species was described as being found in scattered forest remnants in coastal Ecuador from Guayas to Esmeraldas Province (Horstman 2005, p. 3).

In addition to the small population in the Cerro Blanco Protected Forest, recently reported to be about 11 individuals, there may be another small group in the Rio Canande Reserve, which is humid tropical forest, in the Esmeraldas province in coastal northern Ecuador (Horstman pers comm. in Hardman 2010, p. 12). Rio Canande Reserve (1,813 ha or 4,478 ac) is one of eight reserves managed by another NGO, the Jocotoco Foundation. The most recent population census in Ecuador was conducted in the provinces of Esmeraldas, Santa Elena, and Guayas. Five individuals were recently observed in the Bosque Protector Chongón Colonche; one macaw was observed at the Hacienda El Molino, near the Cerro Blanco Protected Forest; and two macaws were seen at Rio Canande (Horstman 2011, p. 16). The Cordillera (mountain range) de Chongón-Colonche is on the central pacific coast of Ecuador, located in the provinces of Guayas and Manabi. Some individual great green macaws have also been observed at Hacienda Gonzalez (40 km or 25 mi) northwest of Guayaquil; however, these individuals may be part of the same population found in Cerro Blanco. In summary, the majority of individuals are believed to be in Esmeraldas Province, and very small numbers remain in the Chongón-Colonche mountain range, Guayas.

Honduras

In 1983, the great green macaw was common in lowland rain forests in the Moskitia (Mosquitia) area and eastern Olancho (Marcus 1983, p. 623). The region known as the Moskitia includes both eastern Honduras and northern Nicaragua. Historically, the species was reported to occur in the areas of Juticalpa and Catacamas in Olancho (Marcus 1983, p. 623). The species has been observed daily in the Plátano River area in flocks of more than 10 individuals and almost daily in the Patuca River area, usually in pairs (Barborak 1997 in Snyder *et al.* 2000, pp. 121–123). In August 1992, it was recorded on the Patuca River at Pimienta upstream from Wampusirpe (Wiendenfeld in Monge *et al.* 2009, p. 242). Currently, it exists in the Rio Plátano Biosphere Reserve (800,000 ha or 1,976,843 ac), which has been described as one of the most important reserves in Central America (Anderson *et al.* 2004, p. 447).

Nicaragua

In Nicaragua, the great green macaw is found primarily in lowland, tropical, and rain forest, as well as pine barrens, primarily in the Bosawas Reserve in the north and around the Indio-Maíz and San Juan rivers in the south (Stocks *et al.* 2007, p. 1503; Martinéz-Sánchez 2007; Chassot 2004, p. 36). The name Bosawas is derived from three significant geographic landmarks that delineate the reserve's core zone limits: The Bocay River, Mount Saslaya, and the Waspuk River. The Bosawas protected area contains habitat that is vital to the species. In the buffer zone of the Indio-Maíz Biological Reserve, great green macaw nesting locations have been identified. The Indio-Maíz Biological Reserve is located in Nicaragua just across the San Juan River at the northern border of Costa Rica, and is nearly 264,000 ha (652,358 ac) in size. The Nicaragua and Costa Rica macaw populations intermix; macaws have been observed crossing the San Juan River, which separates Nicaragua and Costa Rica. As of 2006, in the Quezada, Bijagua, Samaria, and La Juana communities, five macaw nests had been located during surveying. Recently, 35 active nests had been documented in the Indio-Maíz Biological Reserve (Monge *et al.* 2010, p. 16).

In 1999, Powell *et al.* estimated that the Nicaraguan great green macaw population could be 10 times the size of the population in Costa Rica. In 2008, a population viability analysis was conducted that indicated the size of the great green macaw population in Nicaragua was 661 individuals (Monge *et al.* 2010, p. 21). In 2009, a population census was conducted, during which 432 macaws were observed. The researchers suggest that the "average population" in Nicaragua is 532 (Monge *et al.* 2010, p. 13). This 2009 study yielded an estimated population of 871 individuals in Costa Rica and Nicaragua combined (Monge *et al.* 2010, p. 21).

Panama

In Panama, the great green macaw is believed to inhabit the following areas: Bocas del Toro, La Amistad, northern Veraguas, Colon, San Blas, Darién, and Veraguas South (Monge *et al.* 2009, unpaginated). The species has been described as locally fairly common near Cana, Alturas de Nique, in 2005 (Angehr

in litt. 2005). As of 2009, the historical distribution in Panama was described as not well known due to lack of information (Monge *et al.* 2009, p. 68). The most viable population is believed to be in Darién National Park, Panama, which borders Colombia (Monge *et al.* 2009, p. 68; Angehr in litt. 1996 in Snyder *et al.* 2000, pp. 121–123; Ridgley 1982). Researchers believe the Darién area may contain the largest overall population of the great green macaw. However, there is little recent information to confirm this (Monge *et al.* 2009, p. 68). Darién National Park is the largest national park in Panama, and one of the largest tropical forest protected areas in Central America (TNC 2011, p. 1). The Darién region encompasses nearly 809,371 ha (2 million acres) of protected areas, including Darién National Park and Biosphere Reserve, Punta Patiño Natural Reserve, Brage Biological Corridor, and two indigenous reserves (TNC 2011, p. 1). La Amistad, an area which may have a fairly viable population, connects suitable habitat in Panama such as Cerro Punta, Rio Plátano, and the Darién region, and connects the remote hills of Bocas del Toro Province with habitat in Costa Rica. La Amistad is approximately 200,000 ha (500,000 acres) in area.

Summary of Population Estimate

The global population of great green macaws is estimated to be fewer than 2,500 mature individuals, or no more than 3,700 individuals (Monge *et al.* 2009, p. 213; Jahn in litt. 2005, 2007, unpaginated). Based on the best available information from experts, the total population is likely between 1,000 and 3,000 individuals (Botero-Delgadillo and Páez 2011, p. 91; Monge *et al.* 2009, p. 213; Monge *et al.* 2009b, p. 68). In Ecuador, the population is estimated to be likely fewer than 80 individuals (Horstman 2011, p. 17). In 2009, a census was conducted in Costa Rica and Nicaragua (Monge *et al.* 2010, p. 13). A total of 173 individuals were observed in the Costa Rican study area, and 432 individuals were observed in the Nicaraguan study area during the breeding season (Monge *et al.* 2010, p. 22), with the areas of Mónico, Romerito, and Bartola having the highest estimated abundance at the time of each census. The population of the great green macaw for Costa Rica is currently estimated to be approximately 302 individuals, and the population for Nicaragua is roughly estimated to be 532 individuals (Monge *et al.* 2010, p. 22). Horstman and Jahn both state that the estimate for Ecuador may be optimistic (in litt.). Species with strict habitat requirements such as the great green macaw are particularly subject to population size overestimation, because they are unlikely to be randomly distributed within the habitat (Jetz *et al.* 2008, p. 116). Thus, additional surveys are needed and ground-truthing (gathering data regarding where the species is located) is essential to obtain accurate population estimates for this species.

Habitat and Life History

The great green macaw inhabits humid lowland foothills and deciduous forests generally below 600 m (1,968 ft), but also may occur between 1,000 and 1,500 m (3,281 and 4,921 ft) depending on suitable habitat, which is primarily based on the presence of almendro (Dipteryx panamensis) trees. The type of habitat preferred by the great green macaw is an ecosystem where the almendro tree and *Pentacletra macroloba* (oil bean tree) dominate (Chassot *et al.* 2006, p. 35). This species' nests have been found in *Carapa nicaraguensis* (caobilla), *Enterolobium schomburgkii* (guanacaste blanco), *Goethalsia meiantha, Prioria copaifera* (cativo), and *Vochysia ferruginea* (botarrama) trees (Chosset and Arias 2010, p. 14; Powell *et al.* 1999). Nests have been observed in large trees, with cavities that are nearly 20 m (66 ft) above ground (Rodriguez-Mahecha 2002, p. 119). Great green macaws have been observed to use the same nesting cavity for many years if they are undisturbed, although they may alternate nest sites each year (Chun 2008, p. 102). Reproductive capability is generally reached between ages 5 and 6 years (Chassot *et al.* 2004, p. 34). The great green macaw mates for life, and nests in deep cavities (usually of almendro trees) from December to June (Chassot *et al.* in Villate *et al.* 2008, p. 19; Monge *et al.* 2002, p. 39). The incubation time is 26 days and the nesting period is 12 to 13 weeks (Rodriguez-Mahecha *et al.* 2002, p. 119). After the breeding season, individuals disperse from the lowlands towards higher forests in the mountains in search of food (Powell *et al.* 1999 in Chosset et al. 2004, p. 38).

The great green macaw has been observed in flocks of up to 18 individuals, and has been observed traveling long distances on the Caribbean slope. Macaws are strong fliers and are known to travel hundreds of kilometers (Chosset and Arias 2010, p. 5; Chosett *et al.* 2004, p. 36). During a study in the late 1990s, macaws fitted with radio transmitters demonstrated that macaws migrate seasonally based on food availability, and were found to travel between 40 and 58 km (25 to 36 mi) while in search of food (Chosset *et al.* 2004, p. 35).

Diet

The great green macaw has been observed feeding on fruits of 37 tree species (Berg *et al.* 2007, p. 2; Chassot *et al.* 2006, p. 35). While it is closely associated with the almendro tree, its diet varies based on location. In Ecuador, it was observed feeding on the following tree species: *Cordia eriostigma* (totumbo), *Cynometra* sp. (cocobolo), *Ficus trigunata* (matapalo), *Ficus* sp. (higuerón), *Psidium acutangulum* (Guayaba de monte), *Chrysophyllum caimito* (caimito), and *Vitex gigantea* (tillo blanco or pechiche) (Berg *et al.* 2007, p. 2; Waugh 1995, p. 7). In other parts of its range, it has also been observed feeding on *Cavanillesia platanifolia* (no common name [NCN]), *Cecropia litoralis* (pumpwood or trumpet tree), *Centrolobium ochroxylum* (amarillo de guayaquil), *Cochlospermum vitifolium* (buttercup tree), *Lecythis ampla* (sapucaia), *Leucaena trichodes* (NCN), *Odroma pyramidalis* (NCN), *Pseudobombax guayasen* (NCN), *Pseudobombax millei* (beldaco), *Rafia* species (believed to be palms), *Sloanea* spp., *Symphonia globulifera* (NCN), and *Terminalia valverdeae* (guarapo) (Berg *et al.* 2007, p. 6). One preferred plant species, *Cynometra bauhiniifolia* (NCN), produced more food than nine other species (Berg *et al.* 2007, p. 1). In another study, two of the most important sources of food for the great green macaw, in addition to the almendro tree, were found to be *Sacoglottis trichogyna* (titor, rosita, or manteco) and *Vochysia ferruginea* (NCN) (Herrero-Fernandez 2006, p. 9; Chassot *et al.* 2006, p. 35). *S. trichogyna* fruits were observed to be its preferred food when *D. panamensis* was scarce or unavailable in Costa Rica (Chassot *et al.* 2004, p. 34).

Almendro Trees

The great green macaw is closely associated with almendro trees for feeding and nesting in the majority of its range (Chun 2008, p. iv; Chosset *et al.* 2004, p. 34). Because the great green macaw is highly dependent on the almendro tree, we are describing almendro tree habitat, its life history, and factors that affect its habitat. The almendro tree (also known as the tropical almond or mountain almond tree) is a member of the pea family (Fabaceae; Papilionoideae) and bears compact, single-seeded drupes. The seeds are encased in a thick woody endocarp that has been observed to persist on the forest floor for up to 2

years (Hanson 2006, p. 68). This tree species is only located in southern Nicaragua, Costa Rica, Panama, and Colombia, where it grows primarily in the lowlands of the Atlantic plains. They require an annual rainfall of 3 to 5 m (approximately 10 to 16 ft) (Schmidt 2009, p. 14) for optimal growth. A 2008 study reported that nearly 90 percent of all great green macaw nests identified in northern Costa Rica are located within hollowed cavities of large almendro trees (Chun 2008, p. 109). Additionally, almendro trees were found to provide 80 to 90 percent of both the macaw's food and nesting needs. Great green macaw pairs tend to select nesting trees that are surrounded by relatively dense stands of reproducing almendro trees (Chun 2008). Almendro tree fruit sustains the adults, chicks, nestlings, and fledglings over the course of the breeding and development season, which coincides with the peak production of almendro fruit (November through March).

Likely pollinators of the almendro tree are bees within the genera *Bombus, Centris, Melipona, Trigona,* and *Epicharis* (Thiele 2002 in Hanson 2006, p. 3; Flores 1992, pp. 1–22; Perry *et al.* 1980, p. 310). These trees are referred to as "emergent" because they are the tallest trees in the forest. Almendro trees can grow to over 46 m (150 ft) and reach a diameter of 1.5 m (4.92 ft). Three hundred-year-old trees have been documented, but research suggests that the almendro tree has a maximum potential age of 654 years (Fichtler *et al.* 2003 in Schmidt 2009, p. 15).

Wood from the almendro tree is heavy, is commercially valuable, and yields the highest prices on local markets (Rodriguez and Chaves 2008, p. 5). It is used for furniture, floorings, bridges, railroad ties, boats, marine construction, handicrafts, veneers, industrial machinery, sporting equipment, springboards, and agricultural tool handles (Schmidt 2009, p. 16). Almendro outsells every other tree species on the Costa Rican timber market (Grethel and Norman 2009 in Schmidt 2009, p. 77; Rodriguez and Chaves 2008, p. 5). It was listed in Appendix III of CITES in Costa Rica in 2003, and in Nicaragua in 2007 (*http://www.cites.org*). A species is unilaterally listed in Appendix III by a country in the native range of that species, at the request of that country. Article II, paragraph 3, of CITES states that "Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade." For the export of specimens of an Appendix–III species, the Management Authority in the country of export needs to determine that the specimens were not obtained in contravention of that country's laws. In addition to CITES protections, a recent decision by the fourth Chamber of Costa Rica's Supreme Court in 2008 required the Ministry of Environment and Energy (MINAE, or Ministerio de Ambiente y Energia) to abstain from the use, exploitation, or extraction of almendro trees (Chun 2008, p. 113).

Recent research found that this tree species is much more restricted to lowland habitat than previously described; it is predicted to occur between 45 and 125 m (147 to 410 ft) in elevation, in part based on its soil requirements (Schmidt 2009, p. iv; Chun 2008, p. 109). The almendro tree is best adapted to areas with high levels of rainfall and acidic clay soils with good drainage below elevations of 500 m (1,640 ft), such as the Atlantic lowlands of Costa Rica (Schmidt 2009, p. iv). Almendro trees require at least 2000 millimeters (mm) (79 inches) of rainfall per year for optimal growth (Schmidt 2009, p. 69).

Great green macaw breeding pairs are believed to require a home range of 550 ha (1,359 ac) (Chun 2008, p. 105). Because the great green macaw requires such a large range and is strongly associated with almendro trees, range countries such as Nicaragua and Costa Rica have developed conservation plans for the almendro tree. Almendro trees commonly occur at a density of less than one adult tree per hectare (Hanson *et al.* 2008 in Schmidt 2009, p. 14; Hanson *et al.* 2006, p. 49). The highest density recorded was 4 trees per hectare (Chaverri and López 1998). In one area of Costa Rica that was surveyed for almendro trees, of 140,178 ha (56,728 ac) surveyed, 20 percent exhibited densities of 0.50 almendro trees per hectare or more, and 50 percent had densities of 0.20 trees per ha or more (Chun 2008, p. 103).

Due to their important role in the ecosystem, particularly with respect to the great green macaw, conservation efforts have focused on the almendro tree. These trees not only provide habitat to many wildlife species such as the great green macaw, but they also play a significant role in the ecosystem. One conservation strategy for the great green macaw is to protect 30,159 ha (74,493 acres) of primary, secondary, and mangrove forest that remains in this species' nesting habitat. Another conservation strategy has been to establish almendro tree plantations. Due to its open crown structure, almendro has a relatively translucent canopy that produces only moderate shade, which allows for the production of shade canopy crops such as pineapple and cacao (Schmidt 2009, p. 19). These almendro plantations are being researched for several reasons, particularly due to the almendro tree's ability to resist decay, its ability to capture carbon dioxide, and its role in the ecosystem (Schmidt 2009, p. 11). Additionally, almendro trees have been identified as the most promising species for long-term carbon sink reforestation projects in Costa Rica (Redondo-Brenes 2007, p. 253; Redondo-Brenes and Montagnini 2006, p. 168).

In Ecuador, the great green macaw is not dependant on almendro trees, although the great green macaw still inhabits humid lowland areas (Juniper and Parr 1998, p. 424). In this habitat, the great green macaw prefers *Lecythis ampla* (salero) in the Esmeraldas rainforest, *Cynometra bauhiniaefolia* (cocobolo) as a primary food source, and pigio (*Cavanillesia platanifolia*) as a nest tree (Horstman pers. comm. 2011).

Conservation Status

There are various protections in place for the great green macaw at the international, national, and local levels. At the international level, this species is listed as endangered on the IUCN Red List due to continuous loss of habitat, hunting, and poaching of this species for the pet trade (IUCN 2011). IUCN's Red List classifies species as endangered (extinction probability of 20 percent within 20 years) or critically endangered (extinction probability of 50 percent within 10 years) based on several criteria, including limited or declining ranges or populations. However, the status under IUCN conveys no actual protections. This species is listed in Appendix I of CITES. Appendix I includes species threatened with extinction that are or may be affected by international trade, and are generally prohibited from commercial trade. Refer to the discussion above for the military macaw for additional information about CITES. The great green macaw's conservation status in each country is discussed below and in more detail under Factor D.

Colombia

The great green macaw is listed as Vulnerable on Colombia's Red List (Renjifo *et al.* 2002, p. 524). It has protected status in Los Katíos National Park, Utría National Park, Paramillo National Park, and Farallones de Cali National Natural Park (Rodriguez *et al.* 2002, pp. 120–121). The largest

population of the great green macaw is believed to exist in the Darién Endemic Bird Area (EBA) 023, which encompasses southern Panamá and northwestern Colombia. However, there are no reliable population estimates for this area (Botero-Delgadillo and Páez 2011, p. 91; Jahn *in litt.* 2004). Colombia developed a National Action Plan for the Conservation of Threatened Parrots (Plan Nacional de Acción para la Conservación de los Loros Amenazados), and it was in effect until 2007. The ProAves Foundation, an NGO in Colombia, has been active in parrot conservation since 2005. Other than NGO involvement, it is unclear what proactive, effective protections are in place for this species.

Costa Rica

The great green macaw is considered to be endangered in Costa Rica (Monge *et al.* 2010; Herrero 2006, p. 6; Executive Order No. 26435–MINAE). Several intense conservation initiatives are underway for this species in Costa Rica. In 2001, a committee was formed to investigate a corridor for the conservation of this species' habitat. As a result, the San Juan-La Selva Biological Corridor was formed to connect the Indio Maíz Biological Reserve in southeastern Nicaragua with the Central Volcanic Cordillera Range in Costa Rica. This links Costa Rica's La Selva Biological Station in the north to the Barra del Colorado Wildlife Reserve and National Park and Protective Zone of Tortuguero on Costa Rica's Caribbean coast. In addition, the conservation team lobbied for the establishment of the Maquenque National Wildlife Refuge to protect the macaw's breeding habitat (Hardman 2010, p. 10; Chun 2008, p. 98). This corridor makes up a part of the larger MesoAmerican Biological Corridor, which has been proposed to connect protected habitat from the Yucatan Region in southern Mexico and Belize to the Darién National Park in Panama (*http://www.greatgreenmacaw.org/BiologicalCorridor.htm*, accessed October 25, 2011).

The San Juan-La Selva bi-national corridor links existing protected wild areas. There is also an extended part to the northwest that includes the El Castillo area. The goal of this initiative is to provide linkages to 29 protected areas involving 1,311,182 ha (3,240,001 ac) (Chassot *et al.* 2006, p. 85). Because macaws are known to move hundreds of kilometers (Chosset and Arias 2010, p. 5), these linkages should allow for this species to better access different habitats so that it is able to meet its nutritional and nesting requirements. In addition to containing key conservation sites for the great green macaw, the corridor connects the vast expanse that includes Punta Gorda Natural Reserve, Cerro Silva Natural Reserve, and Fortaleza Inmaculada Concepción de María Historic Monument (Chassot *et al.* 2006, p. 85). The corridor also provides connections among unprotected forest patches in Costa Rica in addition to providing connections to protected areas. Many of these areas may not be pristine habitat; some areas are either inhabited by humans or used by local communities to extract resources. However, there are conservation awareness programs in place throughout the corridor, and the great green macaw is being intensely managed and monitored in the San Juan-La Selva Biological Corridor.

Ecuador

This species is categorized as critically endangered in Ecuador (Monge *et al.* 2009, p. 256), primarily due to deforestation and hunting pressures. In Ecuador, the only potentially viable population is believed to exist in the Cerro Blanco Protected Forest, which is 6,070 ha (15,000 ac) in size. The Guayaquil subspecies of the great green macaw (*Ara a. guyaquilensis*) is thought to be in imminent danger of extinction (Berg 2007, p. 1). In 2008, the National Preservation Strategy for the Great Green Macaw in Ecuador was described at the Great Green Macaw Population Viability Assessment and Habitat Conservation Workshop held in Costa Rica; however, funding is still lacking for many of the initiatives in Ecuador that have been prescribed as necessary for the conservation of this species.

Honduras

The great green macaw is categorized as endangered in Honduras (List of Wildlife Species of Special Concern, Resolution No. Gg–003–98 APVS). In 1990, the government of Honduras prohibited the capture and sale of wildlife, including the great green macaw in Honduras. Currently, this species exists in the Rio Plátano Biosphere Reserve (which consists of 800,000 ha or 1,976,843 ac). The official designation of the Biosphere as a reserve is to protect and conserve biodiversity; however, this designation has not halted deforestation within the protected area (UNESCO 2011, p. 1; ParksWatch 2011; Wade 2007, p. 65). Additionally, as of 2009, there were 23 areas in Honduras identified as Important Bird Areas (IBAs) (Devenish *et al.* 2009, p. 1) that may provide additional protections to this species in part by serving as ecotourism sites which can increase conservation efforts in the areas. For additional information on IBAs, see the discussion above for the military macaw.

Nicaragua

Nicaragua follows the IUCN categorization for this species (Castellon 2008, pp. 13, 19; Lezama-López 2006, p. 90). The great green macaw exists in the Indio-Maíz Biological Reserve, which has had protected status since 1990, although threats to the species still exist in this Reserve (Herrera 2004, pp. 5–6). Nicaragua is also participating in the bi-national conservation strategy for this species (Monge *et al.* 2009, pp. 11, 16).

Panama

There is little information available regarding the status of this species in Panama (Monge *et al.* 2009, p. 67); however, Panama follows the IUCN categorization for this species (Devenish *et al.* 2009, p. 294). The great green macaw is believed to be in Darién National Park (Monge *et al.* 2009, p. 68). Panama's wildlife law of 1995, Law No. 24, establishes the standards for wildlife conservation.

NGO Involvement

There are many nongovernmental organization (NGO), private, and government efforts to protect this species, although not all of the projects and NGOs are identified in this document. NGOs have conducted collaborative efforts, such as training workshops, that are community-focused and aimed at the conservation of habitat. In Nicaragua, Fundación Cocibolca is active in this species' conservation. The NGO first signed an agreement with Nicaragua's Natural Resources Ministry (MARENA) in 1996, at which time the conservation group was the first NGO to have been granted responsibility to manage a national protected area in Nicaragua (*http://www.marena.gob.ni;* accessed November 9, 2011; *http://www.planeta.com*, accessed November 9, 2011). The Nicaraguan conservation organization, Fundación del Rio, works in the buffer zone of the Indio-Maíz Biological Reserve, which borders the San Juan River (Villate 2008, p. 39). In 1999, this NGO began an environmental education program in this buffer zone to promote awareness of the great green macaw and its habitat. In another area, as a result of conservation efforts, the local government of El Castillo declared this species the official municipal bird, and the city established sanctions to those intending to harm this species (Chassot *et al.* 2008, p. 23).

Since 2001, Fundación del Río and the Tropical Science Center in Costa Rica have coordinated a binational campaign focused on promoting the awareness of the ecology of the great green macaw in the lowlands of the San Juan River area (Chassot *et al.* 2009, p. 9). Between 2002 and 2005, at least 11 workshops on great green macaw biology and preservation were held within communities of the buffer zone of Indio-Maiz Biological Reserve in Costa Rica (Chassot *et al.* 2006, p. 86). Some examples of projects initiated by NGOs include installation of nest boxes to increase nest availability and community heritage festivals that are focused on the great green macaw. Some NGOs are providing training to local communities to monitor populations, and some researchers are studying this species via satellite transmitters to determine the species' home range and specific habitat used (Chosset *et al.* 2004, p. 35). In Costa Rica and Nicaragua, 20 communities are participating in monitoring and protection activities of the great green macaw (Chosset and Arias 2010, p. 3). The primary objectives of the campaign have been to improve awareness by conducting workshops on the importance, threats, and conservation of the great green macaw and its habitat; to strengthen natural resources management by environmental authorities of both Nicaragua and Costa Rica, focusing on the local and international biological corridors; and to organize joint activities (Chassot *et al.* 2006, p. 83).

In Colombia, the NGO, ProAves, has made great progress in forming partnerships at the local, regional, and international levels to carry out bird conservation initiatives (Chassot *et al.* 2008, p. 23; Quevado-Gill *et al.* 2006, p. 18). Additionally, reforestation efforts have occurred (Monge *et al.* 2009, p. 263). These efforts have focused primarily within the reserves of the Colombian Civil Society Association Network (Quevado-Gill *et al.* 2006, p. 17). Conservation efforts and these workshops have been important because they have trained the community in sustainable development by linking local agricultural activities to the protection of natural resources (Quevado-Gill *et al.* 2006, p. 17).

Three NGOs are active in the conservation of this species in Ecuador: Pro-Forest Foundation in Guayas Province, Fundación Natura, and the Jocotoco Foundation at the Rio Canande Reserve in Esmeraldas Province. The Pro-Forest Foundation (Fundación ProBosque) was created in 1992, through a decree of the Ecuadorian Ministry of Agriculture. Its mission is to protect areas with an emphasis in reforestation, agroforestry, investigation, environmental education, ecotourism programs, all in order to support the conservation of biodiversity.

In Panama, the Asociación Nacional para la Conservación de la Naturaleza (ANCON) began conservation work in 1991. The project has jointly worked on conservation efforts with Panama's Instituto Nacional de Recursos Naturales Renovables (INRENARE). ANCON has worked on training park rangers, marking and patrolling paths and park boundaries, acquiring property around parks and tree nurseries, and improving agricultural techniques (TNC 2011, p. 2).

Additionally, members from several NGOs participated in the great green macaw conservation workshop held in the 2008. The purpose of the workshop was to bring together experts, to determine the priorities for the conservation of the species, and to develop a plan for its conservation (Monge *et al.* 2009, entire). We acknowledge the substantial effort underway by various NGOs in the range countries of this species to protect it and its habitat. Despite many efforts in place, the populations of the great green macaw continue to face many threats to its habitat.

Evaluation of Threat Factors

Introduction

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal List of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the ESA, a species may be determined to be endangered or threatened based on any of the following five factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; and

(5) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the great green macaw in relation to the five factors in section 4(a)(1) of the ESA is discussed below. In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and, during the status review, we attempt to determine how significant a threat it is. The identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors, singly or in combination, are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the ESA.

This status review focuses primarily on where this species has been documented, which is generally in parks and other areas with protected status and the peripheral zones. In some cases, we will evaluate the factor by country. In other cases, we may evaluate the factor by a broader region or context, for example, if we do not have adequate information specific to a particular country about this species. This is because often threats are the same or very similar throughout the species' range. If we do not have information about the species in a particular area, we will state this and request information during this proposed rule's comment period (see **DATES**, above).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Throughout the range of this species, the factors impacting the great green macaw are generally very similar. The main factors affecting this species are habitat loss and degradation, and poaching (McGinley *et al.* 2009, p. 11; Berg *et al.* 2007; Chassot *et al.* 2006; Quevado-Gill *et al.* 2006, p. 16; Guedes 2004, p. 280). Both Central and South America continue to experience high levels of deforestation (FAO 2010, p. xvi). Habitat loss is primarily due to conversion of the species' habitat (generally forests) to agriculture and other forms that are not optimal for this species (Chosset and Arias 2010, p. 3; Monge *et al.* 2009, entire).

Almendro habitat, this species' primary food and nesting source, has declined significantly (Schmidt 2009, p. 16), particularly since the 1980s. Almendro and other tree species used by the great green macaw have been selectively cut down and removed from this species' habitat. Selective logging is the practice of removing one or two generally large, mature trees and leaving the rest. Throughout the range of the great green macaw, its habitat has declined primarily due to competition

for resources and human encroachment (Guedes 2004, p. 279; Rodríguez-Mahecha and Hernández-Camacho 2002; Chassot and Monge 2002 in Rothman 2008, p. 509). Its habitat has continuously been clear-cut and converted to agriculture or human establishments, which is discussed in more detail below.

Logging

Tree species used by macaws tend to be large, mature trees with large nesting cavities. The practice of selective logging can severely impact macaws because this practice often targets the old, large trees that the macaws depend upon for nesting. In selective logging, the most valuable trees from a forest are commercially extracted (Asner *et al.* 2005, p. 480; Johns 1988, p. 31), and the forest is left to regenerate naturally or with some management until being subsequently logged again. Johns (1988, p. 31), looking at a West Malaysian dipterocarp forest, found that mechanized selective logging in tropical rainforests, which usually removes a small percentage of timber trees, causes severe incidental damage. He found that the extraction of 3.3 percent of trees destroyed 50.9 percent of the forest. Timber companies operating under a selective logging system can cause considerable damage to the surrounding forest, both to trees and soil. Selective logging can cause widespread collateral damage to remaining trees, subcanopy vegetation, and soil, and the practice impacts hydrological processes, erosion, fire, carbon storage, and plant and animal species (Chomitz *et al.* 2007, pp. 117, 119; Asner *et al.* 2005, p. 480). Forests that were selectively logged 15 years before exhibited an open structure with skeletons of incidentally killed trees, serious gulley erosion, and vegetation on waterlogged sites that had been compacted by heavy vehicles (Edwards 1993, p. 9). Because selective logging targets large, mature trees, this practice can have a disproportionate impact on hole-nesters, such as macaws. Additionally, the availability of food sources for frugivores (fruit-eaters, such as the great green macaw) is reduced because the trees that contain nutritional sources are no longer there.

Selective logging is particularly devastating in the case of the great green macaw, as the species is closely associated with the almendro tree, which it needs for both food and shelter. The almendro tree's wood is of great commercial value due to its strength and durability for flooring, roofing, and irrigation systems (Madriz-Vargas 2004, p. 8). Because this tree species is quite high in commercial value, it has been selectively logged. Concern for this tree species was significant enough that the species was added to CITES Appendix III in Costa Rica and Nicaragua. Listing species in Appendix III enhances conservation measures enacted for the species by regulating international trade in the species, particularly by preventing trade in illegally acquired specimens. In general, shipments containing CITES-listed species receive greater scrutiny from border officials in both the exporting and importing countries. The elimination of almendro trees is possibly the most severe threat for the species in its range countries with the exception of Ecuador, where the decrease in availability of other tree species used by the great green macaw is a concern.

Unsustainable logging practices that destroy the forest canopy also reduce habitat available to the great green macaw. The great green macaw's primary nesting habitat, the almendro tree, is slow growing and may take centuries to reach sufficient size to harbor cavities (Schmidt 2009, p. 15). Although the nest cavities that the macaws prefer (deep and dry) may take 10 to 20 years to form, these nests can last for several decades (Chun 2008, p. 101). Not only have amounts of available suitable habitat decreased, but the spatial distribution of its habitat has also changed, making foraging more difficult and requiring more energy expended. Even in undisturbed forests, suitable tree cavities are usually limited. As a result, each loss of a nest site can represent the loss of potentially many future chicks that could have been raised in each tree cavity.

Agriculture

Habitat degradation, particularly due to conversion of forest habitat to agriculture or plantations, is a major factor affecting great green macaws. The clearing of forests and buffer zones for the development of plantations for bananas, oil palms, cacao, coffee, soybeans, and rice destroys great green macaw nesting sites and exposes chicks to poaching for the pet trade (Botero *et al.* 2011, p. 92; Monge *et al.* 2009, pp. 26, 29, 43, 54; Waugh 1995, p. 2). By 2005, the world's tropical forests biome had decreased to less than 50 percent tree cover (Donald *et al.* 2010, p. 26), in part due to the above activities. Tropical forest fragmentation due to these activities continues to be a concern. A discussion of habitat loss and degradation for each country follows.

Colombia

Very little information is available about the great green macaw's status in Colombia (Botero-Delgadillo and Páez 2011, pp. 86, 90; Monge *et al.* 2009; Jahn in litt. 2004). A large population is believed to exist in Los Katíos National Park, which borders the swampy and sparsely-populated Darién region in Panama; however there are no recent reported observations of the species in this area. Population surveys need to be conducted (Botero-Delgadillo *et al.* 2011, pp. 88, 90; Monge *et al.* 2009). At least 40 percent of the great green macaw's original distribution area in northwestern Colombia was deforested by 1997 (Etter 1998 in Jahn in litt. 2004). Threats to this species in Colombia have been identified as: Agriculture (particularly illegal coca cultivation); agroindustrial farms; large forest plantings of exotic trees; wood extraction; development of infrastructure; and hunting, capturing, harvesting of this species (Botero-Delgadillo and Páez 2011, pp. 91–92). Threats specific to Los Katíos National Park are illegal deforestation and hunting (UNEP–WCMC 2009, p. 1). In 2009, the threats in this park were so severe that the park was added to UNESCO's List of World Heritage Sites in Danger (*http://whc.unesco.org/en/list/711*, accessed January 17, 2012).

Deforestation

Colombia has experienced extensive deforestation in the last half of the 20th century as a result of habitat conversion for human settlements, road building, agriculture, and timber extraction (FAO 2010, p. 233; Armenteras *et al.* 2006, p. 354). A 23-year study, conducted from 1973 to 1996, found that these activities reduced the amount of primary forest cover in Colombia by approximately 3,605 ha (8,908 ac) annually, representing a nearly one-third total loss of primary forest habitat (Viña *et al.* 2004, pp. 123–124). More than 70 percent of rural land of Colombia located in former forestlands is now devoted to cattle grazing (Etter and McAlpine 2007, pp. 89–92). Beginning in the 1980s, habitat loss increased dramatically as a result of influxes of people settling in formerly pristine areas (Perz *et al.* 2005, pp. 26–28; Viña *et al.* 2004, p. 124). More recent studies indicate that the rate of habitat destruction is accelerating (FAO 2010, p. xvi). Between the years 1990 and 2005, Colombia lost approximately 52,800 ha (130,471 ac) of primary forest annually (Butler 2006a, pp. 1–3).

Primary forest habitats such as those used by the great green macaw throughout Colombia have undergone extensive deforestation. Viña *et al.* (2004, pp. 123–124) used satellite imagery to analyze deforestation rates

and patterns along the Colombian-Ecuadorian Border (in the Departments of Putumayo and Sucumbios, respectively) and found that between 1973 and 1996 a total of 829 km² (320 mi²) of tropical forests within the study area were converted to other uses. This corresponds to a nearly one-third total loss of primary forest habitat, or a nearly 2 percent mean annual rate of deforestation within the study area. Habitat loss and degradation, including conversion of this species' habitat to other forms of use such as agriculture, plantations, or harvesting of this species' plant food sources, continue to occur and affect the quality of this species' habitat.

In addition to the direct detrimental effect of habitat loss, there are several indirect effects of habitat disturbance and fragmentation, such as road building (Brooks and Strahl 2000, p. 10). Roads increase human access into habitat, facilitating further exploitation, erosion, and habitat destruction (Chomitz *et al.* 2007, p. 88; Hunter 1996, pp. 158–159). Research has documented that road building and other infrastructure developments in areas that were previously remote forested areas have increased accessibility and facilitated further habitat destruction and human settlement (Etter *et al.* 2006, p. 1; Álvarez 2005, p. 2,042; Cárdenas and Rodríguez-Becerra 2004, pp. 125–130; Viña *et al.* 2004, pp. 118–119; Hunter 1996, 158–159). A study conducted on the effects of habitat fragmentation on Andean birds within western Colombia determined that 31 percent of the historical bird populations in western Colombia had become extinct or locally extirpated by 1990, primarily as a result of habitat fragmentation from deforestation and human encroachment (Kattan and Álvarez-Lopez 1996, p. 5; Kattan *et al.* 1994, p. 141). Greater exposure of soil to direct sunlight leads to factors such as drier soils and also creates a different growing environment. For example, the creation of roads changes the habitat by altering the distance of nesting and feeding habitat to the forest "edge," increasing the amount of light exposure, and creating stress on (breeding) individuals in part due to noise and visual stimuli (Benítez-López *et al.* 2010, p. 1,308).

Coca Cultivation

Ongoing coca cultivation has had a significant impact on forest cover in Colombia (Armenteras *et al.* 2006, p. 355; Fjeldså *et al.* 2005, p. 205; Page 2003, p. 2; Álvarez 2002, pp. 1,088–1,093). Colombia is one of the leading producers of coca, the plant species that provides the main ingredient of cocaine. Between 1998 and 2002, cultivation of illicit crops increased by 21 percent each year, with a parallel increase in deforestation of formerly pristine areas of approximately 60 percent (Álvarez 2002, pp. 1,088–1,093). Much of Colombia's coca is grown by farmers because it generates more income than any other crop (Butler 2006, pp. 1–2). Illegal drug crops are cultivated within the great green macaw's range (BLI 2011, pp. 1–2). Large-scale coca production has moved into the extensive rainforests of the Chocó state, which is considered to be a biodiversity hotspot in northwest Colombia, in the range of the great green macaw.

A 1990 United Nations study estimated that coca growers can make about $4,000 U.S. dollars per hectare (Tammen 1991, p. 12 in Page 2003, pp. 15–16). A farmer can only earn about $600 per hectare growing an alternative crop such as coffee, which is the most often-cited potential substitute crop for coca (Page 2003, pp. 15–16). Page notes that production of coffee and tea requires 3 to 4 years from planting to first harvest and then can only be harvested once per year, while coca can be harvested 8 months after it is planted and can be harvested every 90 days thereafter. The coca bushes themselves do not require much care, and can be cultivated on plots of land that are much smaller than those required for crops other than coca (Tammen 1991, p. 6 in Page 2003, p. 16). Finally, not only do coca crops displace native habitat and species assemblages that are important for the great green macaw, but they also deplete the soil of nutrients, which hampers regeneration following abandonment of fields (Van Schoik and Schulberg 1993, p. 21).

Drug eradication efforts in Colombia have further degraded and destroyed primary forest habitat by using nonspecific aerial herbicides to destroy illegal crops (BLI 2007d, p. 3; Álvarez 2005, p. 2,042; Cárdenas and Rodríguez Becerra 2004, p. 355; Oldham and Massey 2002, pp. 9–12). For example, in 2006, eradication efforts were undertaken on over 2,130 km² (822 mi²) of land, which included spraying of 1,720 km² (664 mi²) and manual eradication on the remaining land. These eradication efforts occurred over an area 2.7 times greater than the net cultivation area (UNODC *et al.* 2007, p. 8). Herbicide spraying has introduced harmful chemicals into great green macaw habitat and has led to further destruction of the habitat by forcing growers to move to new, previously untouched forested areas (Álvarez 2007, pp. 133–143; BLI 2007d, p. 3; Álvarez 2005, p. 2042; Cárdenas and Rodríguez Becerra 2004, p. 355; Oldham and Massey 2002, pp. 9–12; Álvarez 2002, pp. 1,088–1,093).

The ecological impacts of coca production are significant. Farmers clear forest to plant coca seedlings. Not only does each acre of crop production result in the clearing of roughly 1.6 ha (4 ac) of forest, this practice also results in secondary effects such as the pollution of land and local waterways with the chemicals used to process coca leaves, including kerosene, sulfuric acid, acetone, and carbide (Butler 2006, pp. 1–2).

Costa Rica

Most of the research on this species has been conducted in Costa Rica, where a very small population of this species remains. Despite Costa Rica's progress in conservation of this species, the historical breeding area for this species in Costa Rica has been reduced by 90 percent (Villate *et al.* 2008, p. 19; Chosset *et al.* 2004, p. 38). In 2004, approximately 30 reproductive pairs remained in the wild in Costa Rica (Madriz-Vargas 2004, p. 4). Up until the 1960s, Costa Rica's human population was growing by approximately 4 percent annually (World Bank 2011, unpaginated; Chun 2008, p. 6). Logging in the 1960s and 1970s decimated this species' habitat (Hardman 2010, p. 8). In the 1980s, the area near Puerto Viejo de Sarapiqui experienced severe deforestation and conversion to banana and pineapple plantations. By 1996, 52,000 ha (128,495 ac) of lowland forest had been converted to banana plantations (Brewster 2009, p. 8). The loss of forested area in the north has primarily been due to the production of livestock, forestry products, sugar cane, and (in more recent years) pineapple (Villate *et al.* 2008, p. 15).

In the mid-1980s, policies changed from granting incentives for livestock and cattle ranching to reforestation for forest management. However, these incentives led initially to the clearing forests for conversion to exotic species plantations. As a result, forestry in Costa Rica (and Panama) has been dominated by the use of exotic species such as Tectona grandis (teak) or Gmelina arborea (melina) (Schmidt 2009, p. 10). This trend changed in 1986, with the Forestry Act 7472. In the 1990s, the focus changed, and the government began to create incentives for small farm owners to establish and maintain native tree species plantations (Piotto *et al.* 2003, p. 427). By 1992, a project was implemented to improve the use of forested areas; however, it estimated that by that time only 5 percent of

original forest area remained intact (Chassot *et al.* 2001 in Villate *et al.* 2008, p. 15). Reforestation projects began initially through an agreement between Costa Rica and Germany. The program was implemented by the Agribusiness Association and Forestry Producers (APAIFO) and the Cooperation for Forestry Development San Carlos (CODEFORSA).

In Costa Rica's border zone with Nicaragua, Landsat TM satellite images from 1987, 1998, and 2005 showed a fragmented landscape with remnants of natural ecosystems, which has implications for the conservation of this species. The images identified several classes of cover and land use (natural forest, secondary forest, water, agriculture and pasture, banana and pineapple plantations, and bare ground) (Chassot *et al.* 2009, pp. 8–9). These researchers noted that the annual rate of deforestation was 0.88 percent for the 1987–1998 period, and 0.73 percent for the 1998–2005 period, even considering recovery of secondary forest. The researchers also noted that in the area studied, deforestation rates were higher than national averages for the same time span (Chassot *et al.* 2009, p. 9).

In the 1990s, plans to form the San Juan-La Selva Biological Corridor began in response to the significant decrease in habitat available to the great green macaw and its decline in population numbers. In 1993 and 1994, about 1,000 km² (386 mi²) were identified as important nesting areas for this species in Costa Rica. In 2002, the San Juan-La Selva Biological Corridor, an area of 60,000 hectares (148,263 ac), was established to protect the nesting sites and migration flyway of the great green macaw in Costa Rica, up to the Nicaragua border (Guedes 2004, p. 280). Although this corridor is in place, recent reports indicate that habitat degradation and other factors continue to affect the great green macaw (Monge *et al.* 2009, p. 121).

To its credit, Costa Rica was the only country in Central America that had a positive overall increase in forest area during the period 2000–2005 (FAO 2010, p. 19; FAO 2007). Intense efforts are underway in Costa Rica to conserve and recover this species, in part by addressing habitat degradation. In some areas, the commercial use of the almendro tree is now being replaced by synthetic material due to conservation efforts focused on the great green macaw. In some areas, landowners are being paid to protect and "adopt" almendro trees, and several ecotourism projects have developed using these trees and the macaws as part of the ecotourism attraction. As of 2009, 12 nesting trees had protection agreements (Brewster 2009, p. 10). Still, habitat degradation continues to impact the great green macaw (Villate *et al.* 2008, p. 14), and even trees that are designated as protected are either cut down or targeted for poaching (Chun 2008). Logging still occurs in the remnant forests of both the northern zone of Costa Rica and southeast Nicaragua (Chassot and Arias 2011, p. 1; Monge *et al.* 2009, pp. 128–129). Logging, while it may be illegal, has also been documented in the buffer zone of the Indio-Maíz Biological Reserve (Monge *et al.* 2006, p. 10). The buffer zone is within the breeding range of the great green macaw and likely affects the species' viability. Additionally, both primary and regrowth forest in the San Juan-La Selva Biological Corridor continue to be threatened by timber extraction and agricultural expansion (Chassot and Arias 2011, p. 1; Monge *et al.* 2009, pp. 128–129).

Mining

A gold mining project may also affect conservation efforts for the great green macaw in Costa Rica. In 2001, the Ministerio del Medio Ambiente y Energía (MINAE) granted the mining concession (Resolution R–578–2001—MINAE) in San Carlos to clear nearly 202 ha (500 ac) of old-growth rainforest for the project (Villate 2009, p. 57; *http://www.infinito.co.cr* and *http://www.nacla.org*, both accessed November 15, 2011). The Crucitas mining project is located in the Northwest Corridor of San Juan-La Selva, a few miles from the San Juan river (which separates Costa Rica from Nicaragua). The Crucitas area is part of a major zone for bird conservation initiatives, partly implemented by BLI, that includes both the Water and Peace Biosphere Reserve and the San Juan-La Selva Biological Corridor (Chassot *et al.* 2009, p. 9), including the El Castillo extension. It is reported that 72 percent of the area that had been proposed for implementation of the project is forested and contains almendro tree (and consequently great green macaw) habitat. The company proposed to clear cut the area in order to establish the open pit mine.

In adjacent Nicaragua, the area of influence of the mining project is also part of the buffer zone of the two reserves: San Juan River Biosphere Reserve and the Indio-Maíz Biological Reserve. These areas contain features of endemism and species compositions that are unique (Sistema Nacional de Áreas de Conservación (SINAC) 2007 in Villate *et al.* 2008, p. 58). Although Crucitas is not part of the current nesting area of the great green macaw, it is only about 10 km (3 mi) southeast of the historical distribution of the species. The mining activities are likely to affect the current population of the great green macaw by impacting its habitat as well as ongoing conservation efforts. The project lies within a geographical area that is of critical importance to the conservation of this species. Additionally, the removal of more primary forest cover would further reduce the ability to maintain connectivity along the San Juan-La Selva Biological Corridor, which continues to be subjected to fragmentation (Villate 2008, p. 58). As of November 2010, a court ruled that the open-pit gold mine was improperly permitted (*http://centralamericadata.biz/en/article/home/Crucitas_Mining_Concession_Cancellation_Confirmed*, accessed January 12, 2012). However, prior to the court ruling, 121 ha (300 ac) of primary forest had already been cleared (*http://www.santuariolapas.com/profile_003.html*, accessed December 14, 2011). The ultimate impacts and outcome of the mining project are unclear; however, the species is and will continue to be impacted by pressures for resources that affect its habitat.

Ecuador

Although the population of great green macaw is reported to be stable and slowly increasing in the Cerro Blanco Protected Forest, it is an extremely small population (Monge *et al.* 2009, p. 256). There are likely fewer than 100 individuals remaining in Ecuador. In this part of its range, three tree species are noted as crucial for the survival of the species: *Lecythis ampla* (salero) and *Cynometra bauhiniaefolia* (cocobolo),as primary food sources, and *Cavanillesia platanifolia* (pigio) as a nest tree (Horstman 2011, p. 17). Logging, poaching, and illegal land settlements continue to occur in the great green macaw's range and are threats to the population in Ecuador, particularly in the Cerro Blanco Protected Forest (*http://www.worldlandtrust-us.org*, unpaginated; World Wildlife Fund 2011, p. 5; Horstman 2011, p. 12). Between 1960 and 1980, the human population in Ecuador grew from 4 to 10.2 million, which resulted in more than 90 percent of Pacific lowland and foothill forest below 900 m (2,953 ft) being converted to agriculture (Dodson and Gentry 1991, p. 279). Much of the species' habitat was converted to plantations of bananas, oil palms, cacao,

coffee, soybeans, and rice (ELAW 2005, p. 1; Dodson and Gentry 1991, p. 279).

In 2002, the Government of Ecuador authorized the conversion of 50,000 ha (123,553 ac) of tropical forest in the Choco region of western Ecuador into oil palm plantations (ELAW 2005, pp. 1–2). As of 2005, 374 ha (924 ac) of native forests were being cut daily (Horstman 2005, p. 8). Clearing forests for this monoculture crop has threatened thousands of endemic species and introduced dangerous pesticides to local ecosystems (Cárdenas 2007, p. 43). For example, in Esmeraldas Province, pesticides are used intensively in a 36,000-ha (88,958-ac) area of oil palm plantations (ELAW 2005, pp. 1–2). Local villages cite problems from the pesticides and effluents from the processing plants.

Logging, poaching, and illegal land settlement are occurring in the Cerro Blanco Protected Forest, Ecuador (ProForest Foundation (Fundacion ProBosque), undated, p. 3). The Food and Agriculture Organization of the United Nations (FAO) reported in 2010 that in Ecuador, "planted forests are predominantly composed of introduced species," such as rubber plantations and other nonnative species (FAO 2010, p. 93), which do not provide appropriate habitat and nutritional needs for the great green macaw. Despite these activities, due to the efforts of the ProForest Foundation—the NGO in charge of the reserve—the population in the Cerro Blanco forest preserve is reported to be stable (Horstman 2011, p. 17). The Cerro Blanco forest preserve is a small area that is being managed particularly for this species. It is jointly owned by the ProForest Foundation and a cement company, Holcim, as mitigation for its nearby limestone quarries. Reserve managers are converting former cattle pasture to native tree farms, which they use to help restore dry tropical forest in other locations, including a corridor to nearby patches of forested areas (Horstman 2009 pers. comm.). Despite the conservation efforts in place, logging, poaching, and illegal land settlement continue to affect the population in the Cerro Blanco Protected Forest (Horstman 2011, p. 17; Fundacion Pro-Bosque, undated, p. 3). A conservation strategy for this species recommends that a ban be instituted on the cutting and commercialization of the three tree species described above that were noted as crucial for the great green macaw's survival (Monge *et al.* 2009, pp. 256–258). However, deforestation, encroachment, and habitat degradation activities such as these continue (Horstman 2011, p. 17).

Another threat to the macaw's population in this reserve is the rapid expansion of the city of Guayaquil. Squatter settlements develop on the city's outskirts and encroach the forest (Fundacion ProBosque undated, p. 3). Illegal settlements are a problem, and squatter communities have attempted to take over property within Cerro Blanco. The local NGO conducts educational awareness programs to mitigate these activities. An example of awareness campaign activities is educating the local communities about the effect on their water supply when they destroy forested areas (Horstman pers. comm. in Hardman 2010, p. 13). However, pressures to this species' habitat continue to impact the species.

Honduras

In Honduras, threats have included illegal trafficking of this species and deforestation due to agriculture, cattle grazing, and logging (Devenish *et al.* 2009, p. 256). The threat of deforestation is particularly important because a recent study found that 87 percent of Honduras is only suitable for forest (Larios and Coronado 2006, p. 13) due to its generally mountainous terrain. There is very little information available on the status of this species in Honduras, particularly scientific literature (Monge *et al.* 2009, p. 122). Only six papers on avian diversity and avian population surveys in Honduran forests were published between 1968 and 2004 (Anderson *et al.* 2004, p. 456). However, we do know that the threats in Honduras are similar to those in other countries within the range of this species (McCann *et al.* 2003, pp. 321–322), and the most significant threat is deforestation. In 2008, the Departamento de Áreas Protegidas y de Vida Silvestre (DAPVS) in Honduras estimated that 80,000 ha (197,684 ac) of natural areas were being destroyed annually (DAPVS 2008 in Devenish *et al.*, 2009 p. 256).

The great green macaw is believed to exist in the Río Plátano Biosphere Reserve within the watershed of the Plátano River (Monge *et al.* 2009, p. 8). The area is also known as the "Mosquitia Hondureña," which is 500,000 ha (1,235,527 ac) in size. The reserve serves as protection to the 100 km (62 mi) long Plátano River watershed, in addition to protecting parts of the Paulaya, Guampu, and Sicre rivers (Devenish 2009, p. 256). Several indigenous tribes such as the Miskito, Tawahka, Pech, Garífunas, and "Mestizos" use this area for their traditional livelihoods. Although this reserve was designated as a World Heritage Site, pressures to the reserve area for its resources continue (TNC 2011, unpaginated). In 2011, the Río Plátano Biosphere Reserve was added to the list of World Heritage Sites in danger due to encroachment (UNEP–WCMC 2011, p. 1).

In the Río Plátano Biosphere Reserve of Honduras, the unregulated extraction of timber and mass production of bananas has caused an alarming decline of great green macaw populations (Devenish *et al.* 2009, p. 256). The deforestation in Honduras is occurring as a result of an increase in the human population, which requires clearing areas for home development as well as wood products (Devenish *et al.* 2009, p. 256). The annual human population growth rate as of 2011 was estimated to be 1.09 percent (U.S. Department of State 2011, unpaginated). Palacios and Brus Laguna, towns on the coast approximately 5 km (3.1 mi) from the park on either side of the reserve, are likely contributing to the pressures such as agriculture and logging that are occurring illegally in the reserve.

Nicaragua

In Nicaragua, great green macaws face reductions in populations due to illegal extraction of timber and agricultural expansion (McGinley *et al.* 2009, pp. 13, 33, 35; Jeffrey 2001, pp. 1–5). Overall, there is a lack of information about the status of the great green macaw population and its habitat in Nicaragua (Monge *et al.* 2010; Monge *et al.* 2009, pp. 52–53). However, a population of the great green macaw is known to occur in the Indio-Maíz Biological Reserve, located in Nicaragua just across the San Juan River at the northeastern border of Costa Rica (Monge *et al.* 2009, p. 51). where suitable habitat for this species remains. This reserve, which is believed to be one of the few strongholds for the great green macaw, is nearly 264,000 ha (652,358 ac) in size. It is likely that the Indio-Maíz Biological Reserve contains extensive forest areas with high densities of almendro trees (Chun 2008, p. 94), and therefore is critical to this species' survival. Chun suggests that many areas in Nicaragua may exceed the minimum great green macaw nesting requirement of 0.20 trees per hectare within the breeding territory. Although the Indio-Maíz Biological Reserve is considered one of Nicaragua's best preserved forested areas and has limited access, its buffer zone has recently been under assault from activities such as loggers in search of lumber and illegal farming of Elaeis guineensis (African palm) trees for biofuel (Chosset and Arias 2010, p. 3; Ravnborg *et al.* 2006, p. 2). As resources become more scarce in the buffer zones,

illegal activities push farther into the lesser disturbed and lesser accessible areas. Despite the existence of this protected area, deforestation continues to occur.

Deforestation is one of the major threats to biodiversity in this region; one steadily increasing form is the conversion of forest into agricultural or pasture lands (Chassot *et al.* 2006, p. 84). In Nicaragua, between 1990 and 2005, 1.35 million ha (3.34 million ac) of forested areas were converted to agriculture or were deforested due to other reasons such as logging (FAO 2010, p. 232; FAO 2007). Much of Nicaragua has protected status. In 2005, approximately 36 percent of Nicaragua's forested area was designated as protected or in some form of conservation status (FAO 2007). Additionally, in 2007, there were 72 protected areas in Nicaragua's National System of Protected Areas (Castellon 2008, p. 19). However, 88 percent of Nicaragua's area designated as forest is privately owned (FAO 2010, p. 238), and, therefore, is not protected. Additionally, much of the logging that occurs is illegal and is not monitored (Pellegrini 2011, p. 21; Richards *et al.* 2003, p. 283).

As an example, the Bosawas Reserve is one of the areas believed to contain great green macaws as well as suitable habitat for a viable population. It was designated a reserve in 1979, in response to the advance of the agricultural frontier (Cuéllar and Kandel 2005, p. 9). However, during the 1980s, the area was not managed; it was the battleground for the armed conflict between the Sandinistas and the Contras (Cuéllar and Susan Kandel 2005, p. 9). In October 1991, Bosawas was declared a National Natural Resource Reserve through Executive Decree No. 44–91. Despite its designation as a protected area, encroachment and habitat degradation still occur (McCann *et al.* 2003, p. 322). In Bosawas, indigenous tribal communities have rights to use the forests under the Autonomy Statute of 1987 (Cuéllar and Kandel 2005, p. 11). As of 1998, the indigenous population was approximately 9,200 in or near the Bosawas reserve (Stocks *et al.* 2007, p. 1497). In 2005, the Nicaraguan government granted land titles to 86 indigenous Miskitu and Mayangna groups in Bosawas and contiguous indigenous areas (Stocks *et al.* 2007, p. 497). Generally, these indigenous communities manage the forests well and want to maintain their traditional way of life. However, "mestizo" communities were encouraged to settle in the area that is now the reserve's buffer zone during the period when lands were being converted to plantations. Both the mestizo and indigenous communities depend on access to land to ensure their livelihoods. However, the mestizo communities convert primary forest to agricultural or livestock uses (Cuéllar and Kandel 2005, p. 13), while the indigenous communities have less impact on the ecosystem. Land rights disputes are common in these areas, and land use rights are often unclear. The Government of Nicaragua is attempting to manage these issues (Pellegrini 2011, p. 21), but conflict and practices that degrade the great green macaw's habitat persist both in the Bosawas Reserve and in other areas within the range of the species.

One of the factors contributing to deforestation in this area is a high rate of poverty (Pacheco *et al.* 2011, p. 4). Nicaragua is the poorest country in Central America (CIA World Factbook 2011). In part, due to the high rate of poverty, the great green macaw continues to face threats to its habitat. Communities living within the range of the great green macaw practice unsustainable activities, such as conversion of habitat to agriculture or logging, which contribute to deforestation of the species' remaining habitat in Nicaragua (McGinley 2009, p. 36; Castellon 2008, pp. 21, 30; Richards *et al.* 2003, p. 282). Much of the Indio-Maíz Biological Reserve is described as being intact and unlogged (Chun 2008, p. 116). Despite this, some loggers cross the border into Nicaragua to harvest the almendro tree (Schmidt 2009, p. 16; Chassot *et al.* 2006, p. 84). Anecdotal reports indicate that Costa Rican loggers pay Nicaraguan farmers about $15 for each almendro tree, bring the logs to Costa Rica, and sell them for about $1,450 in Costa Rica (Arias 2002, p. 4). Because incomes in the Bosawas region of Nicaragua were found to average under $800 per family per year (Stocks *et al.* 2007, p. 1,498), the almendro trees are quite valuable. Consequently, a bi-national biological corridor between Nicaragua and Costa Rica was proposed in an attempt to prevent the extinction of the almendro tree (Chassot *et al.* 2006, p. 84). Although this corridor exists and efforts are in place (refer to discussion under Factor D, below) to mitigate border issues (Hernandez *et al.*, undated, pp. 1–14) in this region, habitat degradation continues.

Panama

In Panama, this species is believed to primarily exist in the Darién region, which borders northern Colombia (Angeher 2004, in litt.). Deforestation was estimated to exceed 30 percent of the species' original range in Panama (Angehr 2004, in litt.). Although there is limited information available on the threats affecting great green macaw populations in Panama, deforestation is known to occur within this species' range (Monge *et al.* 2009, p. 68; Angehr 2004, in litt.). Conflict regarding land rights of indigenous communities has become one of the most critical issues in the Darién region. The most significant threats to tropical forests in Panama overall include road construction and road improvement, especially in the Darién region, and agricultural expansion, particularly in the Darién and Bocas del Toro regions, which results in increased access to forests (Parker *et al.* 2004, p. V–2). Roads have been found to be one of the leading causes of global biodiversity loss (Benítez-López *et al.* 2010, p. 1,307). The construction of the Pan-American Highway and other roads are affecting the Darién forest area (TNC 2011, p. 1). When roads are constructed, they increase access to previously inaccessible areas. This leads to more pressures on the forested areas, such as conversion to agriculture, competition for resources (such as the extraction of plant species that may be consumed by the great green macaw), and more logging.

A 2006 report indicated that the advance of the agricultural frontier and "spontaneous colonization" occurring at a rate of 50,000 to 80,000 ha (123,500 to 197,700 ac) per year is rapidly shrinking Panama's forests and protected areas (McMahon *et al.* 2006, p. 8). Prior to its formal designation in 1990, La Amistad National Park, which spans the border between Costa Rica and Panama, experienced impacts from cattle ranching, timber extraction, burning, and illegal settlements (UNEP–WCMC 2011, p. 7). Trails, encroachment, roads, grazing, and hunting continue in this area and affect this species' habitat (TNC 2012, unpaginated; UNEP–WCMC 2011, p. 7) . Soil and water resources have been depleted due to traditional agricultural practices and inadequate conservation measures. Indigenous production systems, with their low-intensity land use, long rotation periods, and plentiful forests for hunting and gathering, are increasingly becoming unsustainable due to economic pressures. The indigenous production systems are being replaced by farming systems that emphasize monoculture without rotation, which leads to depleted soils and encourages greater expansion of the agricultural frontier. These threats are heightened by rural poverty that drives populations in

search of areas with a relatively intact natural resource base with high levels of globally significant biodiversity (Pacheco *et al.* 2011, pp. 4, 18). Watershed degradation from deforestation and unsustainable land use has accelerated soil erosion, sedimentation, and pollution. As a result of competition for resources, many farmers and indigenous people have emigrated to the Darién and Bocas del Toro provinces, where the great green macaw is believed to exist in larger numbers than in other parts of the species' range. Unsustainable land practices, the lack of capacity by both public and private stakeholders to encourage sustainable land use, infrastructure development, and the lack of management plans further exacerbate the degradation of this species' habitat.

Darién forests are under pressure from the expanding agricultural frontier and related colonization (TNC 2011, p. 1; McMahon 2006, p. 8). The region's human population is growing at a rate of about 5 percent a year. Loss of forest cover is often linked to agricultural expansion, which often follows new or improved roads, and which results in increased access to forests. Slash-and-burn agriculture has resulted in huge tracts of deforested land. Other factors that affect the stability of great green macaw populations include the National Authority for the Environment's (ANAM) inability to fund programs for protected areas and buffer zones, and the extraction of other minerals and building materials, whether legal or illegal (Angehr *et al.* 2009, p. 291). Logging and mining is legally restricted in the area; however, logging still occurs outside the Darién reserve, and the practice encroaches the remaining forest cover in the buffer zone. Problems in or adjacent to protected areas include illegal clearing for development, agriculture, and cattle grazing; road construction; and extraction of minerals or construction materials (Devenish *et al.* 2009b, p. 291).

The presence of gold mines in the Darién Region, particularly the Cerro Pirre area, was also indicated to be a threat to the species. Significant mining activities in this area were conducted prior to the 18th century. The clearing of forests to create roads for mining facilitates the transport of materials and personnel in and out of the mining zones (Robbins *et al.* 1985, pp. 200, 202). Roads exacerbate deforestation practices such as logging and conversion to agriculture or other land uses, as well as colonization. This area is now an ecotourism site; as of 1985, there is now second-growth forest recovery from the gold mines that had been abandoned during the 18th century. It does not appear that mining in this area still occurs, and, therefore, mining is not currently impacting the species.

Summary of Factor A

The global population of great green macaws is decreasing due to the threats identified above that continue to exert pressure on the species. The loss of much of the older forested areas has reduced high-quality habitat for this species to relatively small and isolated patches throughout its range; however, suitable habitat remains in some protected areas in Central and South America. Habitat degradation poses a significant threat throughout the range of the great green macaw, which is especially vulnerable to the effects of isolation and fragmentation because it tends to mate for life, it has a small clutch size and specialized habitat requirements, and its populations are small and decreasing.

The great green macaw is naturally associated with unfragmented, mature, forested landscapes, and is considered a habitat specialist that selects areas of contiguous mature forest in Central America and parts of northern South America (Monge *et al.* 2009; Madriz-Vargas 2004, p. 7). This species requires large areas for its feeding requirements and is not well adapted to fragmented landscapes. Deforestation results in fragmented forests with high ratios of edge to forested area, and the original biodiversity upon which this species depends is lost. Greater exposure of soil to direct sunlight leads to factors such as drier soils and also creates a different growing environment. Because there are few remaining older, complex forest stands providing adequate habitat for breeding, feeding, and nesting, great green macaw populations are in decline. The great green macaw is threatened by the impacts of both past and current habitat loss, including ongoing habitat modification that results in poor quality and insufficient forest habitats, habitat fragmentation, and isolation of small populations. The ability of the great green macaw to repopulate an isolated patch of suitable habitat following decline or extirpation is particularly unlikely due to the species' large home range requirements, and this is exacerbated by its small overall population size and the large distances between the remaining primary forest fragments. Despite the existence of the bi-national corridor in Nicaragua and Costa Rica and a multitude of conservation efforts, we find that the present or threatened destruction, modification, or curtailment of habitat is a threat to the great green macaw now and in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Because this species has an extremely small and fragmented population, poaching, while apparently uncommon, remains a concern (Botero-Delgadillo and Páez 2011, p. 13; Monge *et al.* 2009, pp. 26, 40, 106). Removal of this species from the wild has a significant detrimental effect on this species because this species tends to mate for life and only produces 1 or 2 eggs annually. The species has been heavily poached in the wild historically and is still trafficked for the pet trade in Honduras and Nicaragua (Anderson 2004, p. 453; *http://www.lafeberconservationwildlife.com/?p=1714*, accessed December 14, 2011). Although there are no known current reports of poaching in all parts of its range, poaching was raised as a concern at the 2008 workshop held in Costa Rica on this species (Monge *et al.* 2009, various). After regulatory mechanisms such as CITES and the WBCA were put into place, particularly since 1992 when the WBCA went into effect, much of the legal trade in the great green macaw declined (see discussion of military macaw for more information about WBCA) (UNEP–WCMC CITES trade database, accessed September 6, 2011). The great green macaw was listed in CITES Appendix II, effective June 6, 1981, and was transferred to Appendix I, effective August 1, 1985. Most of the international trade in great green macaw specimens consists of live birds.

Data obtained from the United Nations Environment Programme–World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database show that during the 4 years the great green macaw was listed in Appendix II, 26 live great green macaws were reported to UNEP–WCMC as (gross) exports. In analyzing the data, it appears that several records may be overcounts due to slight differences in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of great green macaw specimens in international trade during this period was 22 live birds. All of the live birds were reported with the source "unknown." Exports from range countries included six live birds from Panama and five live birds from Nicaragua (UNEP–WCMC 2011).

During the more than 24 years following the transfer to Appendix I (August 1985 through December 2009,

the last year for which complete data reported are available), the UNEP–WCMC database shows 786 live birds in international trade. However, it is likely that the actual number of live great green macaws in international trade during this period was 701 (U.S. CITES Management Authority 2012). Of these, 647 were reported to be captive-bred or captive-born, 5 were reported as wild, and 15 were reported as "pre-Convention." The source of the remaining live birds is unknown. Exports of live birds from range countries included 17 from Costa Rica, 10 from Ecuador, 12 from Nicaragua, and 6 from Panama. Note also that some of these birds may be personal pets that are counted more than once.

The pressures historically to remove this species from the wild for the pet trade, in part due to its high commercial value, have contributed significantly to the decline in population numbers for this species. Poaching continues to occur in this species' range countries, particularly in Nicaragua (Castellon 2008, pp. 20, 25; Kennedy 2007, pp. 1–2; BLI 2007, p. 1). The majority of information available for Central America regarding poaching and the sale of parrot species was focused in Nicaragua (Herrera-Scott 2004, pp. 1–2). A study published in 2004 assessed the origin and local sale and export of parrots and parakeets in Nicaragua (Herrera-Scott 2004, pp. 1–2), and focused on the buffer zone of the Indio-Maíz Biological Reserve, a critical area for the great green macaw. The study followed the marketing chain from rural areas to the capital city. Most of the wildlife trade was found to occur in Managua. As of 2000, poaching was still occurring in the buffer zone of the Indio-Maíz Biological Reserve (Herrera-Scott 2004, p. 6). An estimated 7,205 parrots were sold during that year (Herrera-Scott 2004, p. 1). The legal export of wildlife species from Nicaragua in general decreased significantly between 2002 and 2006 (McGinley 2009, p. 16). Despite the decrease in legal trade, in 2007, a number of parrot species could be still found for sale along roads to tourists (Kennedy 2007, pp. 1–2; BLI 2007, p. 1) Nicaragua is the poorest country in Central America and the second poorest in the Hemisphere, and has widespread underemployment and poverty (CIA World Factbook 2011, unpaginated; FAO 2011, p. 1). Approximately 17 percent of its population lives in extreme poverty (Castellon 2008, p. 21). Many of Nicaragua's citizens live in rural areas where they usually earn a living from agriculture and fishing, and the sale of a parrot can significantly increase their earnings. As mentioned above under the Factor A discussion, incomes in the Bosawas region of Nicaragua were found to average under $800 per family per year as of 2007 (Stocks *et al.* 2007, p. 1,498). The great green macaw was found for sale at an average of $200 to $400 U.S. dollars (USD) (Fundacion Cocibolca in BLI 2007, p. 1) For perspective, in the United States, captive-bred specimens can sell for up to $2,500 USD (Basile 2009, p. 6). The high commercial value, especially in relation to the average family income, indicates that it is still worthwhile to poach and sell this species. Due to the extreme poverty in Central America, particularly in Nicaragua, and due to the high commercial value of great green macaws, poaching continues to be a significant concern for this species.

Poaching can be intertwined with habitat destruction (Factor A). Some poachers still cut down trees to obtain nestlings (Hardman 2011, p. 13; Chun 2008, p. 105). This practice of cutting down trees to remove nestlings is particularly devastating to small populations reliant upon certain types and sizes of nesting trees. Not only are poachers removing vital members of the population, they are destroying a nest site that may have taken a breeding pair several years to find and cultivate. One study looked at 51 nest sites that had been identified between 1994 and 2003 (Chun 2008, p. 105). The study evaluated potential habitat by examining the presence and density of almendro trees by aerial survey. It examined portions of two protected areas—the San Juan-La Selva Biological Corridor and the Maquenque National Wildlife Refuge (Chun 2008, p. 117). Of 51 nest sites, 10 trees had been cut by the end of the survey period. In some cases, the nests had been deliberately cut even after the tree had received protection status and had been distinguished as a nesting tree with a plaque. Nest destruction has also been reported in Ecuador (Bergman 2009, pp. 6–8), where it is estimated to have an extremely small population. Another study confirmed this practice, although this was a different parrot species, and found an average of 21 nests was destroyed per poaching trip (Gonzalez 2003, p. 443).

Poaching for the pet bird trade can destroy pair bonds, remove potentially reproductive adults from the breeding pool, and have a significant effect on small populations (Kramer and Drake 2010, pp. 511, 513). This is in part because this species mates for life, is long-lived, and has low reproductive rates. These traits make them particularly sensitive to the effects of poaching (Lee 2010, p. 3; Thiollay 2005, p. 1121; Wright *et al.* 2001, p. 711). In some areas in Costa Rica, there were no recent reports of nest poaching due to conservation efforts (Villate *et al.* 2008, p. 23). However, despite conservation efforts in place, the conservation workshop for *Ara ambiguus* held in 2008 indicated that poaching of this species is still a concern throughout its range (Monge *et al.* 2009, pp. 18, 26, 29, 40).

Summary of Factor B

Conservation efforts by various entities working to ensure the long-term conservation of the great green macaw may result in its population slowly increasing (Monge *et al.* 2010, pp. 12–13). However, overall, the best available information indicates that the population is still declining (Botero-Delgadillo and Páez 2011, p. 91; Monge *et al.* 2009). The species still faces threats such as habitat loss and poaching. Often, there is a lag time after factors have acted on species (i.e., poaching and habitat loss) before the effect is evident (Sodhi *et al.* 2004, p. 325). Even though the great green macaw is listed as an Appendix-I species under CITES and commercial international trade is now significantly reduced, there is still concern about the illegal capture of this species in the wild. This species is desirable as a pet, and its native habitat is in impoverished countries, where the sale of an individual bird can significantly increase a person's income. Despite regulatory mechanisms in place, poaching is lucrative and still occurs. Additionally, because each population of great green macaws is small, with possibly between 10 to 500 individuals (Monge *et al.* 2010, pp. 21, 22), poaching is likely to have a significant effect on the species. The populations are distributed widely throughout the range of the species (see Figure 3) and are highly fragmented, and the amount of interaction between populations is unknown but likely infrequent. Based on the best available information, we find that overutilization, particularly due to poaching, is a threat to the great green macaw throughout its range now and in the future.

C. Disease or Predation

Diseases associated with great green macaws in the wild are not well documented (De Kloet and Dorrestein 2009, p. 571; Herrero 2006, pp. 15–19; Tomaszewski *et al.* 2001, p. 533). Studies of macaws have demonstrated that they are susceptible to many

bacterial, parasitic, and viral diseases, particularly in captive environments (Kistler *et al.* 2009, p. 2,176; Portaels *et al.* 1996, p. 319; Clubb and Frenkel 1992, p. 119; Bennett *et al.* 1991; Wainright *et al.* 1987, pp. 673–675). However, most studies are conducted on captive macaws. Some of the diseases known to affect macaws are discussed below.

Pacheco's Parrot Disease

Pacheco's parrot disease is a systemic disease caused by a psittacid herpes virus (PsHV–1) (Tomaszewski *et al.* 2006, p. 536; Abramson *et al.* 1995, p. 293; Panigrahy and Grumbles 1984, pp. 808, 811). It is an acute, rapidly fatal disease of parrots, and sudden death is sometimes the only sign of the disease; however, in some cases, birds may show symptoms and may recover to become carriers (Tomaszewski *et al.* 2006, p. 536; Abramson *et al.* 1995, p. 293; Panigrahy and Grumbles 1984, p. 811). This disease and the presence of PsHV–1 has been known in both captive and wild-caught macaws (Tomaszewski *et al.* 2006, pp. 538, 540, 543; Panigrahy and Grumbles 1984, p. 809); however, we found no information indicating that this disease impacts the great green macaw in the wild.

Psittacosis

Psittacosis (chlamydiosis), also known as parrot fever, is an infectious disease that could affect this species and is caused by the bacteria *Chlamydophila psittaci*. An estimated one percent of all birds in the wild are infected and act as carriers (Jones 2007, unpaginated). *C. psittaci* is transmitted through carriers who often show no signs of the disease. It is often spread through the inhaling of the organism from dried feces (Michigan Department of Agriculture 2002, p. 1), but may also pass orally from adults to nestlings when feeding via regurgitation or from the adult male to the adult female when feeding during incubation (Raso *et al.* 2006, pp. 239). Wild birds may not show clinical signs. This may be explained by a naturally occurring balanced host-parasite relationship (Jones 2007, unpaginated; Raso *et al.* 2006, pp. 236, 239–240).

Proventricular Dilatation Disease

Proventricular dilatation disease (PDD), also known as avian bornavirus (ABV) or macaw wasting disease, is a serious disease reported to infect psittacines. Macaws are among those commonly affected by PPD (Abramson *et al.* 1995, p. 288), although it is a fatal disease that poses a serious threat to all domesticated and wild parrots worldwide, particularly those with very small populations (Kistler *et al.* 2008, p. 1; Abramson *et al.* 1995, p. 288). This contagious disease causes damage to the nerves of the upper digestive tract, so that food digestion and absorption are negatively affected. The disease has a 100-percent mortality rate in affected birds, although the exact manner of transmission between birds is unclear. In 2008, researchers discovered a genetically diverse set of novel ABVs that are thought to be the cause (Kistler *et al.* 2008, p. 1). The researchers developed diagnostic tests, methods of treating or preventing bornavirus infection, and methods for screening for the anti-bornaviral compounds (Kistler *et al.* 2008, pp. 1–15). However, we found no information that this disease affects wild great green macaws.

Psittacine Beak and Feather Disease

Psittacine beak and feather disease (PBFD) is a common circovirus that has been documented in over 60 psittacine species; all psittacines may be potentially susceptible (Rahaus *et al.* 2008, p. 53; Abramson *et al.* 1995, p. 296). This virus, which originated in Australia, affects both wild and captive birds, causing chronic infections resulting in either feather loss or deformities of the beak and feathers (Rahaus *et al.* 2008, p. 53; Cameron 2007, p. 82). PBFD causes immunodeficiency and affects organs such as the liver and brain, and the immune system. Suppression of the immune system can result in secondary infections due to other viruses, bacteria, or fungi. The virus can exist without obvious signs (de Kloet and de Kloet 2004, p. 2,394). Birds usually become infected in the nest by ingesting or inhaling viral particles. Infected birds develop immunity, die within a couple of weeks, or can become chronically infected. No vaccine exists to immunize populations (Cameron 2007, p. 82). We found no information on this disease in great green macaws.

We have no evidence of significant adverse impacts to wild populations of great green macaws due to disease; disease is a normal occurrence within wild populations. A review of the best available information indicates that disease does not occur to an extent that it is a threat to this species, particularly because the populations are widely dispersed, which provides an element of resiliency to the overall population. We conclude, based on the best available scientific and commercial information, that disease is not a threat to the great green macaw now or in the future.

In addition, we have no information indicating that predation threatens the great green macaw. This is the second largest New World macaw, and the best available information does not indicate that predation (other than poaching) is a factor that negatively affects this species. While predators undoubtedly have some effect on fluctuations in great green macaw numbers, there is no evidence to suggest that predation has caused or will cause long-term declines in the great green macaw population. Therefore, we have determined that this factor does not pose a threat to the great green macaw, now or in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms affecting this species that we evaluate could potentially fall under categories such as wildlife management, parks management, or forestry management. We are primarily evaluating these regulatory mechanisms in terms of nationally protected parks because this is where this species generally occurs. A summary of the status of forest policies, regulatory mechanisms, and laws in the range countries of the great green macaw is below. The most authoritative source for assessing the state of forests is the United Nations Food and Agriculture Organization's Forest Resources Assessment (Chomitz *et al.* 2007, p. 42). FAO's 2010 study found that each range country for this species has a national forest law, policy, or program in place, and Table 1 indicates the year it was last evaluated. However, the study found that few forest policies at the subnational level (such as jurisdictions equivalent to states in the United States) exist in these countries.

Country	National forest policy		National forest program			Forest law national		
	Exists	Year	Exists	Year	Status	National—type	Year	Subnational exists
Colombia.	Yes	1996	Yes	2000	Under revision.	Incorporated in other law.	1974	No.
Costa Rica.	Yes	2000	Yes	2001	Under revision.	Specific forest law.	1996	No.
Ecuador	Yes	2002	Yes	2002	In implementation.	Specific forest law.	1981	No.
Honduras.	Yes	1971	Yes	2004	In implementation.	Specific forest law.	–	No.
Nicaragua.	Yes	2008	Yes	2008	In implementation.	Specific forest law.	2003	Yes.
Panama	Yes	2003	Yes	2008	Unclear	Specific forest law.	1994	No.

Table 1. Adapted from FAO Global Forest Resource Assessment 2010, pp. 302–303.

In 2007, FAO noted that many countries (in the range of the great green macaw) had enacted new forest laws or policies within the past 15 years, or had taken steps to strengthen their existing legislation or policies. Among countries that had enacted new forest legislation were Costa Rica, Honduras, Nicaragua, Panama, Colombia, and Ecuador (FAO 2007, p. 43). Despite the existence of these laws and policies, the populations of the great green macaw are still negatively affected by habitat loss, encroachment, and, to a lesser extent, poaching.

Parks and Habitat Management

Throughout this species' range, we found that many of the threats that occur to this species are the same or similar. Threats generally consist of various forms of habitat loss or degradation (see Factor A discussion, above). Each range country for this species has protections in place, but for reasons such as limited budgets and limited enforcement capabilities, the laws and protections are generally not able to adequately protect the species. Our analysis of regulatory mechanisms is discussed essentially on a country-by-country basis, beginning with Colombia, and is summarized at the end.

Colombia

Colombia has enacted numerous laws to protect species and their habitats. This species exists predominantly in areas that are protected, and Colombia has several laws that pertain to protected areas. Some of these laws include:

- Natural Resources and Decree Law number 2811/74.
- Decree 1974/89: Regulation of Article 310 of Decree 2811, 1974, on integrated management districts of natural renewable resources.
- Law number 99/93: Creates the Ministry of the Environments and the National Environmental System.
- Law number 165/94: Biological Diversity Treaty.
- Decree 1791/96: Establishment of the Forest Use Regime.

A list of legislation that applies to protected areas in Colombia is available at *http://www.humboldt.org.co/ingles/en-politica.htm* and at *http://www.regulations.gov* in Docket No. FWS–R9–ES–2011–0101. A discussion of Colombia's regulatory mechanisms with respect to the great green macaw follows.

The great green macaw is listed as vulnerable on Colombia's Red List (Renjifo *et al.* 2002, p. 524). Resolution No. 584 of 2002 provides a list of Colombian wildlife and flora that are considered "threatened." Colombia defines threatened as those species whose natural populations are at risk of extinction if their habitat, range, or the ecosystems that support them have been affected by either natural causes or human actions. Threatened species are further categorized as critically endangered, endangered, or vulnerable. Colombia defines a critically endangered species as one that faces a very high probability of extinction in the wild in the immediate future, based on a drastic reduction of its natural populations and a severe deterioration of its range. An endangered species is one that has a high probability of extinction in the wild in the near future, based on a declining trend of its natural populations and a deterioration of its range. A vulnerable species is one that is described as not in imminent danger of extinction in the near future, but it could be if natural population trends continue downward and deterioration of its range continues (EcoLex 2002, p. 10).

Colombian Law No. 99 of 1993 created the Ministry of the Environment and Renewable Natural Resources and the National Environmental System (SINA). SINA sets out the principles governing environmental policy in Colombia, and provides that the country's biodiversity is protected and used primarily in a sustainable manner (Humboldt Biological Resources Research Institute 2011, unpaginated; EcoLex 1993, p. 2). SINA is a set of activities, resources, programs, and institutions that allow the implementation of environmental principles. Consistent with the Constitution of 1991, this management system was intended to be decentralized. However, an environmental assessment study conducted for the World Bank in 2006 found that Colombia's current decentralized system is inadequate as implemented (Blackman *et al.* 2006, p. 15). Although Law 99 assigns the role of leading and coordinating environmental management in Colombia to the Ministry of Environment (Ministerio del Medio Ambiente, MMA), Colombia's Autonomous Regional Corporations (CARs) have the role of implementing environmental laws (Blackman *et al.* 2006, pp. 39–40, 42). CARs have responsibility for both management of natural resources and economic development (Ministry of Environment *et al.* 2002).

In 2006, an analysis of the effectiveness of Colombia's CARs was conducted for the World Bank. In Blackman *et al.*'s analysis, they reported that many individuals both inside and outside the government felt there was a lack of effectiveness of SINA. For example, Colombia's efforts to eradicate the coca trade has not been effective at reducing the amount of coca being cultivated (Page 2003, p. 2; also see Factor A). In addition to not adequately addressing the coca cultivation, which destroys the great green macaw's habitat, aerial fumigations of the coca crop have destroyed banana fields and polluted the environment (Page 2003, p. 2) (see Factor A discussion, above). The effectiveness of these regional management groups varied; the study found that the effectiveness was correlated with the CARs' age, geographic size, and level of poverty (Blackman *et al.* 2006, p. 16). Due to the decentralized structure, CARs were found to be ineffective at environmental management in Colombia (Blackman *et al.* 2006, p. 14).

This species' habitat occurs to some extent in areas designated as protected by SINA, including five national parks (Rodríguez-Mahecha 2002a). Two parks are particularly significant: Katíos National Park and Utría National Park. Although this species likely exists in at least these two parks (Botero-Delgadillo and Páez 2011, p. 92), no protective measures have been actually implemented to curb human impacts on the species' habitat by the indigenous and farming residents within these protected parks (Botero-Delgadillo and Páez 2011, p. 92). Cultivation of plants for cocaine production is known to occur within the boundaries of Katíos National Park. The cultivation of illegal crops (particularly coca) poses additional threats to the environment beyond the destruction of montane forests (Balslev 1993, p. 3). Coca crop production destroys the soil quality by causing the soil to become more acidic, depletes the soil nutrients, and ultimately impedes the regrowth of secondary forests in abandoned fields (Van Schoik and Schulberg 1993, p. 21; also see Factor A discussion, above). As of 2007, Colombia was the leading coca producer (United Nations Office of Drugs and Crime (UNODC) *et al.* 2007, p. 7). Since 2003, cocaine coca cultivation has remained stable at about 800 km² (309 mi²) of land under cultivation (UNODC *et al.* 2007, p. 8). This activity continues to degrade and destroy great green macaw's habitat. With respect to Utría National Park, little to no information is known about the status of the species in this area (Botero-Delgadillo and Páez 2011, p. 91). Although it is extremely remote, human communities reside within and around the park, and continue to use the resources within the park.

Despite Colombia's numerous laws and regulatory mechanisms to administer and manage wildlife and their habitats, the great green macaw continues to face many threats to its habitat. There is little information available about the species (Botero-Delgadillo and Páez 2011, p. 90), and the most recent information indicates that no conservation action has been proposed for this species (Botero-Delgadillo and Páez 2011, p. 88). On-the-ground enforcement of existing wildlife protection and forestry laws, and oversight of the local jurisdictions implementing and regulating activities, are ineffective at mitigating the primary threats to the great green macaw. As discussed under Factor A (above), habitat destruction, degradation, and fragmentation continue throughout the existing range of the great green macaw. Therefore, we find that the existing regulatory mechanisms currently in place are inadequate to mitigate the primary threats of habitat destruction to the great green macaw in Columbia.

Costa Rica

In Costa Rica, there are more than 30 laws related to the environment (Peterson 2010, p. 1). A list of the environmental laws in Costa Rica is available at: *http://www.costaricalaw.com/costa-rica-environmental-laws.html*. As deforestation is the most significant factor affecting the great green macaw, some laws applicable to the conservation of the great green macaw are:

- Law No. 2790 Wildlife Conservation Law ("Ley De Conservación De La Fauna Silvestre," July 1961).
- Law No. 7317 Wildlife Conservation Law ("Ley De Conservación De La Vida Silvestre," December 1992).
- Law 7554 Law of the Environment ("Ley Orgánica del Ambiente," October 1995).
- Law No. 7575 Forestry Law ("Ley Forestal," February 1996).
- Law 7788 Biodiversity Law (In 1998, the National System of Conservation Areas (SINAC) was created through this law (Canet-Desanti 2007 in Villate *et al.* 2008, p. 24).

In the early 1990s, Costa Rica had one of the highest deforestation rates in Latin America (Butler 2012, p. 3). Forest cover in Costa Rica steadily decreased from 85 percent in 1940, to around 35 percent today, according to the FAO's State of the World's Forests (Butler 2012, unpaginated; FAO 2010, pp. 227, 259; FAO 2007). Historically, clearing for agriculture, particularly for coffee and bananas, in addition to cattle pastures was the main reason for Costa Rica's rainforest destruction. During the 1970s and early 1980s, vast expanses of rainforest had been burned and converted to cattle pastures. Today, although deforestation rates of natural forest have dropped considerably, Costa Rica's remaining forests still experience illegal timber harvesting (in protected areas) and conversion to agriculture (in unprotected zones) (Butler 2012, unpaginated; Monge *et al.* 2009, p. 121; FAO 2007). Despite its abundance of conservation legislation, Costa Rica has undergone significant periods of deforestation (Butler 2012, unpaginated; FAO 2007, p. 38), which have had a severe effect on the great green macaw.

Almendro Tree Protection

In Costa Rica and Nicaragua, the great green macaw is highly dependent on the almendro tree. Almendro trees are found only on the Atlantic coast from southern Nicaragua down through Costa Rica and Panama and into Colombia, primarily at altitudes below 900 m (2,953 ft). This tree species is now protected by law in Costa Rica; cutting any almendro tree over 120 cm (47.2 in) or less than 70 cm (27.6 in) in diameter is prohibited (Rainforest Biodiversity Group 2008, p. 1). The remaining Costa Rican populations of almendro trees are concentrated in the northeastern corner of the country from the San Juan River south to Braulio Carrillo National Park (Hanson 2006, p. 3). Although little forest remains undisturbed in this region, many almendro trees were left standing in fragments or pastures, partly due to the extremely dense nature of the tree's wood and the difficulty in cutting down these trees.

As a result of the great green macaw's dependence on almendro trees, conservation efforts for the great green macaw have focused on this tree species. A decree was enacted in 2001 to limit extraction of the almendro tree. Harvest was temporarily suspended until a study could be conducted to evaluate the status of this primary food and nesting source in relation to the great green macaw (Chosset *et al.* 2002, p. 6). According to Costa Rican legislation (Decree No 25167–MINAE), the removal or logging of almendro trees had been illegal in the area between the San Carlos and Sarapiqui Rivers (Madriz-Vargas 2004, p. 9). The objective of the restrictions placed on

extraction of almendro trees was to increase the number of nesting sites for the great green macaw and to prevent the tree from becoming extinct; however, forest clearings continued to occur at an alarming rate due to the lack of resources to protect biological reserves (Madriz-Vargas 2004, p. 8). For example, researchers reported in 2003 that of the 60 great green macaw nests identified since the great green macaw conservation project was initiated in 1994, 10 had been cut down by forest engineers working in forest management plans (Monge and Chassot 2003, p. 4). In 2008, Costa Rica's Supreme Court stated that MINAE must abstain from the continuation or initiation of the use, exploitation, or extraction of the almendro tree (Chun 2008, p. 113). In Costa Rica, fines for those who cut down almendro trees have been proposed as a measure, although penalties reportedly have not been instituted (Botero-Delgadillo and Páez 2011, p. 92).

Great Green Macaw Conservation

In the two core areas where the great green macaw exists in Costa Rica, conservation activities are underway, and the breeding populations are being closely monitored. Quebrada Grande is a community-operated, 119-ha (294-ac) reserve in the center of great green macaw habitat. Additionally, the National Green Macaw Commission was formed in 1996 to protect and manage this species' habitat. This commission was formed in response to the severe decline of the great green macaw population, and included 13 government agencies, NGOs, and the Sarapiquí Natural Resources Commission (CRENASA). This conservation effort was formalized by Executive Order No. 7815–MINAE of 1999. The group served as an advisory body to MINAE regarding environmental issues in the northern zone of Costa Rica that affect the great green macaw (Chassot and Monge 2008 in Villate *et al.* 2008, p. 22). Conservation efforts are still in progress; in 2008, a workshop was held to bring together species experts and government officials to identify priorities and goals in order to conserve the species (Monge *et al.* 2009, entire).

Additionally, a corridor was created in 2001, with the goal of maintaining connectivity and biodiversity between protected areas in southeastern Nicaragua, the Protected Conservation Area Arenal Huetar North (ACAHN), and Conservation Area of the Central Volcanic Cordillera (ACCVC) in Costa Rica. The primary purpose was to promote the creation of protected wilderness and encourage habitat protection necessary to preserve and increase the great green macaw population (Villate *et al.* 2008, p. 24).

In 2005, the Maquenque National Wildlife Refuge (MNWR) was established primarily to protect breeding habitat for the great green macaw. Approximately 43,700 ha (107,985 ac) of land identified as potential great green macaw breeding habitat lies within the boundaries of MNWR (Chun 2008, p. 113). This region was targeted because it contains several large nesting trees used by great green macaw breeding pairs. MNWR protects foraging habitat that may be critical during the great green macaw's breeding season. MNWR is within the larger San Juan La Selva (SJLS) Biological Corridor, and its goal is specifically to connect protected areas in southern Nicaragua to those in central Costa Rica (Chun 2008, p. 98). However, even in this refuge, habitat degradation continues to occur. A Ramsar (the Convention on wetlands) report on this refuge (which is a Ramsar site), indicated that the main threats there are agricultural and forestry activities, which are most prevalent near the Colpachí and Manatí lagoons (Ramsar 2012, p. 1).

In summary, as of 2002, less than 10 percent of the great green macaw's original range was estimated to exist in Costa Rica (Chosset *et al.* 2002, p. 6). The great green macaw greatly depends on the almendro tree as its primary food and nesting resource. However, due to Costa Rica's complex deforestation history, the great green macaw remains imperiled primarily due to habitat fragmentation, degradation, and habitat loss. In 2004, a maximum of 35 pairs were estimated to be breeding in northern Costa Rica (Chosset *et al.* 2004, p. 32), and the population in this country appears to have increased since a conservation program and regulatory mechanisms have been in place. Costa Rica's population was estimated to be approximately 300 birds in 2010 (Chassot 2010 pers. comm. in Hardman 2010, p. 11; Monge *et al.* 2010, pp. 13, 22). Despite the apparent increase in the population in Costa Rica, the population is extremely small and has experienced significant decline in available habitat over the past 60 years.

Habitat Degradation

In addition to the historical loss of habitat, the species continues to face threats such as habitat degradation. This species requires a complex suite of plant species over the course of a year for its nutritional needs. Pressures to its habitat such as logging, encroachment, habitat degradation, and likely other factors continue within this species' range. Despite conservation efforts in place, such as conservation awareness programs, research, and monitoring, the population has declined significantly over time and is still only estimated to be approximately 300 individuals. Because this species mates for life and has a small clutch size, the loss of any one individual can have a significant effect on the population. Costa Rica has implemented many environmental laws in conjunction with conservation efforts to protect species, particularly the great green macaw and its habitat. The situation of this species is still precarious, and any of the threats acting on the species, such as habitat loss and degradation, poaching, or other unknown factors, could have a significant effect on the population in Costa Rica because it is so small, and because of its life-history characteristics. The existing regulatory mechanisms, as implemented, are insufficient in Costa Rica to adequately ameliorate the current threats to this species.

Ecuador

As of 2006, the Ecuadorian government recognized 31 various legal categories of protected lands (e.g., national parks, biological reserves, geobotanical reserves, bird reserves, wildlife reserves, etc.). The amount of protected land (both forested and non-forested) in Ecuador as of 2006 was approximately 4.67 million ha (11.5 million ac) (ITTO 2006, p. 228). However, only 38 percent of these lands had appropriate conservation measures in place to be considered protected areas according to international standards (i.e., areas that are managed for scientific study or wilderness protection, for ecosystem protection and recreation, for conservation of specific natural features, or for conservation through management intervention) (ITTO 2009, p. 1). Moreover, only 11 percent had management plans, and less than 1 percent (13,000 ha or 32,125 ac) had implemented those management plans (ITTO 2006, p. 228).

In 2004, the Ecuadorian Minister of the Environment signed a ministerial decree forming the National Strategy for the In-Situ Conservation of the Guayaquil Macaw (*Ara a. guayaquilensis*) into law (ProForest 2005, p. 3). The strategy included the following components to be implemented within 10 years. Aspects of this conservation plan, which focuses on the Cerro Blanco Protected Forest, a stronghold for great green macaw, include:

- Applied investigation for the conservation of the species;

- Management of the conservation areas where the presence of the Guayaquil macaw has been confirmed, incorporating new areas that are critical for conservation of the species, and providing connecting corridors between the areas;
- Reforestation with appropriate tree species in its habitat;
- Incentives and sustainable alternatives for communities and private property owners within its range; and
- Conservation of the Guayaquil macaw.

Despite the existence of this strategy, the great green macaw still faces significant threats in Ecuador (Horstman 2011, p. 12). There are likely fewer than 100 individuals of this subspecies remaining in Ecuador. Ecuador recognizes that threats exist to its natural heritage, not only to this species, but to all of its wildlife. In 2008, Ecuador approved Article 71 of its Constitution which states, "Nature has a right to integrally respect its existence as well as the maintenance and regeneration of its vital cycles, structures, functions and evolutionary processes." Article 73 also mandates, "measures of precaution and restriction for all activities that could lead to the extinction of species, the destruction of ecosystems, or the permanent alteration of natural habitats."

Ecuador has made significant strides in conservation. Ecuador's Article 103 of Book IV on Biodiversity decreed that: "It is prohibited, on any day or time of the year, to hunt species, whether birds or mammals, that constitute wildlife and that are listed in Appendix 1 of the present Record that are qualified as threatened or endangered. Hunting is likewise prohibited in certain areas or zones while the bans are in effect" (Monge *et al.* 2009, p. 256; Unified Text of the Secondary Legislation of the Ministry of the Environment). Despite the recent advances made in conservation efforts, Ecuador has gone through periods of devastating habitat loss and degradation, which affected the great green macaw's habitat such that it only remains in two fragmented and small areas. It is unclear how sustainable the remaining habitat is, particularly because this species has specialized feeding requirements and requires a large range to provide its nutritional needs.

The National Strategy for the In-Situ Conservation of the Guayaquil Macaw was revised in 2009. As a result, the first national census of great green macaw was conducted in Ecuador in late 2010 (Horstman 2011, pp. 16–17). The Cerro Blanco Protected Area has been managed by the Pro-Forest Foundation, an NGO, for approximately 20 years (Horstman 2011, unpaginated). Horstman indicated that at the Cerro Blanco Reserve, the resident population of approximately 15 macaws travels widely outside of the 6,475-ha (16,000-ac) reserve (*http://blogs.discovery.com/animal_news/2009/11/help-for-ecuadors-great-green-macaws.html*, accessed October 28, 2011). Horstman, who has worked in this area since the early 1990s, indicated the need to establish a conservation corridor between Cerro Blanco and adjacent patches of suitable forest, and most are less than 40.5 ha (100 ac) in size. During the past 20 years, at least 2,000 ha (4,942 ac) have been reforested (Monge *et al.* 2009, p. 9). Although reforestation projects have occurred, encroachment is still occurring (Horstman 2011, p. 12). Despite conservation efforts and regulatory mechanisms in place, there is still limited funding available for conservation efforts. Encroachment and other forms of habitat degradation continue to occur within its habitat (see Factor A discussion, above). Therefore, we find that the regulatory mechanisms are inadequate to ameliorate the loss and degradation of great green macaw habitat in Ecuador.

Honduras

The National Conservation and Forestry Institute (ICF) (formerly the Protected Areas and Wildlife Department, established in 1991) is responsible for regulating natural resources and management of protected areas. The National Protected Areas System includes 17 national parks created between 1980 and 2007. As of 2009, there were 79 protected areas (Triana and Arce 2012, p. 1). In 1991, the Protected Areas and Wildlife Department (which is now the National Conservation and Forestry Institute (ICF)) was designated to manage natural resources and protected areas (Devenish *et al.* 2009, p. 257; Decree no. 74–91, 1991). Prior to 1991, wildlife was managed by the Honduran Department of Wildlife and Ecology (RENARE).

Decree 98–2007, the Forest Law of Honduras, repealed Decree 163–93 of 1993, which contained the Law on Incentives for Forestation, Reforestation, and Forest Protection. The Forest Law sets forth the purposes of the law, and regulates the use of forestry areas, the rational and sustainable management of forestry resources, protected areas, and wildlife. The law contains definitions and created a series of administrative agencies charged with the implementation of forestry regulations, including the National Forestry Consultative Council. This law also formed the National Forestry Research System and the National Institute for Forestry Conservation and Development (211 provisions; pp. 1–17).

Before the 2007 Forest Law was approved, at least 38 laws governed the sector, creating a confusing policy framework. The situation is further complicated because in many cases, forest tenure (ownership, tenancy, and other arrangements for the use of forests) is unclear. Although most forest is officially state-owned (FAO 2007), states have little practical authority over forest management, and individuals exercise de facto ownership. Corruption is a barrier to legal logging because it facilitates illegal operations and creates obstacles to legal ones (Pellegrini 2011, p. 18; Rodas *et al.* 2005, p. 53). Bribes are extorted from certified community forestry operations, and, reportedly, without bribes, transport of legal wood becomes impossible (Pellegrini 2011, p. 18; Rodas *et al.*, 2005, p. 53).

The new 2007 Forest Law was supported by environmental groups, but its implementation was delayed. The law included the abolition of the Honduran Forest Development Corporation (COHDEFOR) (which received unanimous support), more resources for enforcement, and harsher penalties against those who commit forest-related crimes. Previously, the director of COHDEFOR and other political leaders were owners or employees of logging companies, an apparent conflict of interest (Pellegrini 2011, p. 20). Also at that time, the army was involved in enforcement. Out of the resources that were spent for the forestry sector, the military absorbed 70 percent without producing any evidence that enforcement had improved (Pellegrini 2011, p. 20).

Currently in Honduras, the great green macaw is believed to exist in eastern Honduras in suitable habitat distributed from Olancho to the Río Plátano Biological Reserve, the Tawahka Biological Reserve, and Patuca National Park (Monge *et al.* 2009, p. 39). Its range encompasses both unprotected and protected areas; however, timber exploitation occurs even in areas designated as protected. This practice has created conflicts in protected areas such as the Río Plátano Biosphere Reserve, an area that is considered critical for its conservation (Lopez and Jiménez 2007, p. 26). Demand for mahogany, which has been one of the most extracted species in the area (Lopez and Jiménez 2007, p. 26), has also put pressure on this species' habitat. Selective logging creates openings in forest canopies and changes the ecosystem dynamics and

composition of plant species. Income from logging is higher than that earned for crops and cattle, making logging far more lucrative for locals. However, after areas are logged, they become more accessible and are then often converted to uses such as crops and cattle grazing.

Indigenous communities have rights to use many protected areas. Article 107 of the Honduran Constitution protects the land rights of indigenous people. It is the duty of the government to create measures to protect the rights and interests of indigenous communities in the country, especially with respect to the land and forests where they are settled (Article 346). As an example of land use by Honduran indigenous communities, between 15 and 40 percent of the total value of consumption for two indigenous Tawahka communities was found to be derived directly from the forest (Godoy *et al.* 2002, p. 404). Struggle over land rights is a difficult issue for indigenous communities in Honduras. Logging and mining are some of the biggest threats not only to the great green macaw, but also to the indigenous communities. Indigenous cultures generally have a low impact on the forests (Stocks *et al.* 2007, pp. 1,502–1,503). Because indigenous communities want their lands protected for their traditional way of life, NGOs are working with these communities to protect reserves in Honduras, which should ultimately benefit the great green macaw.

In 1996, the Río Plátano Biosphere Reserve was placed on the "World Heritage Site in Danger" list, but it was removed from the list in 2007, due to a significant improvement in conservation efforts by NGOs. Several NGOs are working in this area including the Mosquitia Paquisa (MOPAWI) and the Rio Plátano Biosphere Project (UNEP–WCMC 2011, p. 5). However, investigations in 2010 and 2011 indicate that there are still problems within the reserve (UNESCO 2011, pp. 1–3). UNESCO, as recently as 2011, conducted a survey in the Río Plátano Reserve and found illegal activity within the core zone (UNESCO 2011, pp. 1–3). Clearing of land for cattle grazing and illegal fishing and hunting along the river is ongoing. The area is protected by policy by the Department of Protected Areas and Wildlife, State Forestry Administration in Honduras. The reserve management plan, implemented in 2000, included zoning and specific plans for conservation issues. One of the goals of the reserve's conservation plan is to integrate local inhabitants with their environment in part via sustainable agricultural practices. This practice has been found to be a good tool in forest conservation (Pellegrini 2011, pp. 3–8). The reserve plan established buffer zones, cultural zones, and nucleus zones. Indigenous communities living in the reserve and buffer zone are allowed to use the resources within the reserve. The integration of indigenous populations plays a large part in the success of the conservation plan, both inside the reserve and outside the reserve in the buffer and peripheral zones (Pellegrini 2011, p. 3; Stocks *et al.* 2007, p. 1502–1503). This reserve also receives some funding from the World Wildlife Fund and other private organizations, which assists in the management of the reserve. However, there are currently no park guards or any official entity actively patrolling or guarding the reserve to enforce restrictions.

There is a complex history concerning the balance of land rights of indigenous communities and preservation of habitat for species such as the great green macaw. In Honduras, there is a gap between forestry policy objectives and the state of forestry. The policy frameworks exist to manage timber extraction, but tools are not implemented (Pellegrini 2011, p. 1). COHDEFOR had been responsible for forestry development and enforcement of laws. The Honduran government began to decentralize COHDEFOR beginning in 1985 (Butler 2012, unpaginated) due to its ineffectiveness. As of 2001, the management of Honduran forests was administered by the Administración Forestal del Estado (AFE, Government Forestry Administration), Corporación Hondureña de Desarrollo Forestal (COHDEFOR Honduran Forestry Development Corporation) (Moreno and Marineros 2001, p. 2). Land use planning occurs at the national level; however, identifying the best use of areas has not been implemented (Pellegrini 2011, p. 17). In addition, estimates of illegal logging are approximately 80 percent of the total volume extracted for broadleaf and 50 percent for coniferous species (Richards *et al.* 2003, p. 1).

Honduras is making progress in managing its forested resources. In 2010, Honduras implemented Agreement number 011–2010 (Ecolex 2011), the Forestry Reinvestment Fund and Plantation Development, and its goal is to recover areas degraded or denuded forests. In 2010, Honduras also put into place Decision No. 31/10, the General Regulation of Forestry Law, Protected Areas and Wildlife (Ecolex 2011). This covers the administration and management of forest resources, protected areas, and wildlife. Despite the progress made in Honduras with respect to laws and regulatory mechanisms that affect the great green macaw and other wildlife, the species continues to face habitat loss and degradation in Honduras.

Nicaragua

Nicaragua's General Environmental and Natural Resources Law No. 217, issued in 1996, is considered the legal framework that defines the standards and mechanisms in regard to the use, conservation, protection, and restoration of the environment and natural resources in a sustainable manner. It recognizes the sustainable development concept. By 2004, Nicaragua had enacted 10 environmental laws and was a member of regional and international environmental agreements (Moreno 2004, p. 9). As of 2004, Nicaragua was moving towards the consolidation of a National System of Protected Areas (SINAP) in order to preserve the country's biological wealth (Moreno 2004, p. 9). SINAP consists of National Protected Areas, Municipal Ecological Parks, and Private Wildlife Reserves of "ecological and social relevance at the local, national, and international level, defined in conformance with the law, and designated according to management categories that permit compliance with national policies and objectives of conservation" (McGinley 2009, p. 19; Protected Areas Regulations: Article 3). However, the overall protection and administration of SINAP is hindered by an inability to administer its financial and human resources (McGinley 2009, p. 20). Of the 72 national protected areas, only 23 had approved management plans in 2008, another 19 were in some phase of the approval process, and 30 protected areas had no management plan at all (McGinley 2009, p. 20). Despite protections in place, enforcement has been lacking in protected areas, and poverty continues to be a huge concern in Nicaragua (FAO 2011, pp. 1–2; McGinley *et al.* 2009, p. 16).

Three assessments of the effectiveness of Nicaragua's laws and regulations with respect to wildlife and forestry laws were recently conducted (Pellegrini 2011; McGinley *et al.* 2009; Castellón *et al.* 2008). The first explored the relationship between forest management and poverty (Pellegrini 2011). The research published in 2009 evaluated Nicaragua's Tropical Forests and Biological Diversity (McGinley *et al.* 2009, entire). The other report evaluated the effectiveness of Nicaragua's wildlife trade policies (Castellón *et al.* 2008, entire). In Nicaragua, the organization responsible for regulation and control of

the forestry sector is the National Forest Institute (INAFOR), which is under the Ministry of Agriculture, Livestock and Forestry (MAGFOR). The other relevant ministry is the Nicaraguan Ministry of Environment and National Resources (MARENA), which supports conservation awareness programs for this species. In early 2003, MARENA created the Municipal Environmental Unit in order to decentralize environmental functions. Although a good legal framework exists in Nicaragua to protect its natural resources, there are still on-the-ground problems that affect this species. For example, in the Indio-Maíz Biological Reserve, one of the strongholds for this species, each forest guard in the control posts along the border of the reserve is responsible for monitoring a stretch of 8 km (5 mi) of the border and an area of 70 km² (27 mi²) (Rocha 2012, pp. 3–6; Ravnborg *et al.* 2006, p. 6). There are communication and perception problems that are prevalent within the reserve that perpetuate the inability to adequately manage the resources within the reserve. These resources are used both legally and illegally by Costa Ricans who cross the San Juan River and the local communities who live in Nicaragua (Rocha 2012, pp. 3–6).

In 2008, the government of Nicaragua published a report on the status of its wildlife laws and mechanisms (Castellon *et al.* 2008, entire). It reported the following findings (p. 9):

- Nicaragua's current laws are inadequate to protect and sustain domestic and international trade in CITES species. They are unfocused and lack provisions on habitat degradation and biological productivity.
- Nicaragua does not have a written wildlife trade policy nor laws to underpin sustainable species management in domestic and international trade. The regulatory instruments pertaining to sustainable management of wildlife trade are relevant and coherent and provide a basis for the formulation of such a policy.
- The nonregulatory instruments for measuring the commercial sustainability of wildlife trade are rarely used. The most important of them are: Monitoring, research, education, and information.
- Study of wildlife harvesting shows that the income from trade in harvested species goes principally to external actors, with little or no benefit to rural communities or populations.

The 2008 study also reported that the government of Nicaragua was unable to find a single case in which the application of its laws led to actual fines or penalties for harvesting or trading banned species (McGinley 2009, p. 22). It found that nonregulatory instruments such as monitoring, research, education, and information are poorly used in the oversight of commercial wildlife trade in Nicaragua. (McGinley 2009, p. 22). Despite these findings, a review undertaken by the CITES Secretariat found that the legislation of Nicaragua has been determined to be sufficient to properly implement the CITES Treaty (see discussion below). The country has made an effort to protect its resources, and is attempting to address the management of its natural resources.

In addition, specific, targeted conservation measures are occurring. An NGO in Nicaragua, with the support of MARENA, is promoting conservation of this species. They have initiated a campaign to educate communities in part by posting messages on buses on three highly traveled public routes in Managua. For example, one message describes why buying endangered species as pets is not a good idea; rather, they should remain in the wild. Additionally, in 2003, Nicaragua and Costa Rica participated in the First Mesoamerican Congress for Protected Areas. Senior representatives of both countries discussed ways to explore the framework of connectivity between protected areas (Villate *et al.* 2008, p. 52). As a result, several active conservation measures for the great green macaw in Nicaragua are underway, such as the development of connected habitat corridors, and the great green macaw conservation workshop was held in 2008. In Nicaragua's Indio-Maíz Biological Reserve, training measures for monitoring the great green macaw have been implemented. For example, technicians associated with Fundacion del Rio have been trained in great green macaw research (Chassot *et al.* 2006, p. 86). The species' population is only estimated to be 871 individuals in Nicaragua and Costa Rica combined (Monge *et al.* 2010, p. 21), and pressures continue to occur to the species and its habitat. Despite regulatory mechanisms in place and the existence of many strategies in Nicaragua to combat threats to the species such as deforestation, habitat loss, and poaching for the wildlife trade, these activities continue.

The impoverished rely strongly on forest products (Pellegrini 2011, pp. 21–22). In an attempt to reduce poverty and at the same time conserve forested areas, analyses addressing poverty reduction were conducted prior to 2002. Strategies, described as Poverty Reduction Strategy Papers (PRSPs), recommended approving a forestry law by 2002 (which actually was approved at the end of 2003) and addressing deforestation as a source of ecological vulnerability. As part of its poverty reduction strategy, Nicaragua developed a National Development Plan (Government of Nicaragua 2005 in Pellegrini 2011, pp. 21–22), the goal of which was to strengthen the whole forestry production chain. However, the plan was reported to not have been effectively implemented (Pellegrini 2011, p. 22). The main policy instruments that set the framework for forestry were the Forest Law and the logging ban. The Forest Law establishes the system of forest management (Pellegrini 2011, pp. 21–22). The law includes incentives for sustainable practices; however, Pellegrini noted that it is virtually impossible to take advantage of the law's provisions without support by external organizations such as NGOs (Pellegrini 2011, p. 22; TNC 2007, pp. 3–7).

Nicaragua is focusing efforts on the restoration and protection of forested areas, and its goal was to reduce the deforestation rate from 70,000 ha (172,974 ac) to 20,000 ha (49,421 ac) per year by 2010 (McGinley 2009, p. 28). Recently, the Associated Foresters of Nicaragua (FORESTAN), in cooperation with a local NGO, the Instituto de Investigaciones y Gestión Social (INGES), began an initiative to increase forest cover. Their goal is to incorporate conservation and production areas over 5,000 ha (12.355 ac), and more effectively use commercially valuable tree species while at the same time creating permanent jobs (INGES–FORESTAN 2005 in Sinreich 2009, p. 63). In 2006, a logging ban was put in place. The ban prohibited extraction of six species of wood and any logging operation in protected areas or within 15 km (9 mi) of all national borders, and it put the army in charge of enforcement (Government of Nicaragua 2006 in Pellegrini 2011, p. 23). However, deforestation rates may have increased even after the ban's approval (Guzmán 2007, pp. 1–2). Although Nicaragua attempts to manage its natural resources, it has a large challenge due to the pressures for its forest resources in combination with extreme poverty (FAO 2011, p. 1; McGinley *et al.* 2009, p. 11). Despite these efforts, pressure on the great green macaw's habitat continues.

Panama

In Panama, the great green macaw's stronghold is believed to be in Darién National Park, which borders Colombia (Monge *et al.* 2009, p. 68; Angehr *in litt.* 1996 in Snyder *et al.* 2000, pp. 121–123; Ridgley 1982). The Darién region encompasses nearly 809,371 ha (2

million ac) of protected areas, including Darién National Park and Biosphere Reserve, Punta Patiño Natural Reserve, Brage Biological Corridor, and two reserves for indigenous communities (TNC 2011, p. 1). Panama's National System of Protected Areas (SINAP) is managed by the National Environmental Authority (ANAM) and consists of 66 areas, totaling 2.5 million ha (6.18 million ac) (Devenish *et al.* 2009b, p. 1–2). Of these, 19 have management plans, and 36 have been through a process of strategic planning (ANAM 2006, unpaginated).

ANAM was established in 1998, through the General Environmental Law of Panama (Law 41). ANAM is the primary government institution for forest and biodiversity conservation and management. ANAM plans, coordinates, regulates, and promotes policies and actions to use, conserve, and develop renewable resources of the country. Its mission statement is to guarantee a healthy environment through the promotion of rational use of natural resources, the organization of environmental management, and the transformation of Panamanian culture to improve the quality of life (Virviescas *et al.* 1998, p. 2). Law 41 also provides the framework for SINAP. Environmental protection in Panama falls under the jurisdiction of three government agencies, the Institute for Renewable Natural Resources, the Ministry of Agricultural Development, and the Ministry of Health. There are 17 management categories of protected areas that were established through INRENARE's Resolution 09–94. A later law, the Forest Law of 2004, established protections for three types of forest, which covers 36 percent of the country.

There are political and economic pressures to develop many areas (Devenish *et al.* 2009b, p. 291). Deforestation, in addition to the lack of management, and lease periods for these concessions of 2 to 5 years, have left only an estimated 250,000 to 350,000 ha (617,763 to 864,868 ac) of production forests in Panama (Gutierrez 2001a in Parker *et al.* 2004, p. I–10). Additionally, many protected areas in Panama lack adequate staff and resources to patrol the areas or enforce regulations (Devenish *et al.* 2009b, p. 291). In 1986, Panama initiated a national forest strategy (Plan de Acción Forestal de Panama or PAFPAN) supported by FAO; however the plan reportedly did not directly tackle the causes of deforestation. Between 1980 and 1990, concessions for 77,800 ha (192,248 ac) of production forests were awarded to 23 companies, for periods ranging from 2 to 5 years (Parker *et al.* 2004, p. II–4). In 1994, a new forestry law was approved, which institutionalized forest management. Now, concessions only exist in the Darién Province (Parker *et al.* 2004, p. II–4). Between 1992 and 2000, the Darién province was one of Panama's provinces that experienced the greatest declines (11.5 percent) in forest cover (Parker *et al.* 2004, p. 32). However, there are activities in place to combat these pressures. For example, a training program exists to increase capacity in issues such as planning, geographic information systems, sustainable tourism, trail construction and management for park staff, community groups, and other stakeholders in the protected area system.

Darién National Park

Darién National Park extends along about 80 percent of the Panama-Colombia border and includes part of the Pacific coast. The area has been under protection since 1972, with the establishment of Alto Darién Protection Forest. It was declared a national park in 1980. The park is zoned as a strictly protected core zone of over 83,000 ha (205,097 ac). Another zone consists of 180,000 ha (444,789 ac) and contains indigenous Indian populations that have maintained their traditional way of life and culture. Approximately 8,000 ha (19,768 ac) is designated for tourism and environmental education, and the last zone is described as an "inspection zone" which is 40-km (25-mi) wide, and spans the Panama-Colombia border. The Darién forests are threatened from logging, agriculture expansion, burning, and hunting and gathering (TNC 2011, pp. 1–2; Monge *et al.* 2009, p. 68). Other threats to forest in the region include the development of projects such as dams and highways (Parker *et al.* 2004, pp. II–7—II–8).

Since 1986, the Asociación Nacional para la Conservación de la Naturaleza (ANCON) has been actively involved in conservation of the park in conjunction with INRENARE, the World Wildlife Fund, and other conservation entities. In 1995, a biodiversity conservation project was initiated. The project's goal was to involve local communities in conservation and sustainable use activities, and was funded by the United Nations Environment Programme (UNEP) and the Global Environment Facility. The Nature Conservancy (TNC) is also active in conservation efforts in this area through its Parks in Peril program (TNC 2011, pp. 1–2).

Panama has also initiated reforestation efforts. For example, beginning in the 1960s, Panama began to plant *Pinus caribaea* (pine species) in degraded areas of the Cordillera of the central region. Additionally, in 1992, a law was passed to provide incentives for the establishment of plantations; however, these were mainly exotic species (Parker *et al.* 2004, p. III–6). Panama is now implementing reforestation and timber production projects that focus on native species. This initiative is known as the "Native Species Reforestation Project" (Proyecto de Reforestación con Especies Nativas; PRORENA) (Schmidt 2009, p. 10). Forestry managers have realized that, in some cases, native species are better adapted and perform better than introduced species. Since 2001, the joint Native Species Reforestation Project between the Smithsonian Tropical Research Institute and the Yale School of Forestry has conducted ongoing research on trees native to Panama. The almendro tree, which is vital to the great green macaw's habitat, has been the subject of research projects in Panama because of its high commercial value (Schmidt 2009, p. 17). Despite efforts to reduce deforestation activities, management problems remain. A study conducted in 2004 suggested that the Forestry Department needs increased autonomy, funding, and staff, and a more appropriate mandate (Parker *et al.* 2004, pp. 10–11). The study suggested that strengthening the Parks and Wildlife Service through increased staffing and resources would enable them to protect and manage protected areas (Parker *et al.* 2004, pp. 10–11).

In summary, Panama has a suite of environmental laws in place, and conservation measures are being implemented by the government in collaboration with some NGOs. However, there is very little information available about the great green macaw in Panama (Monge *et al.* 2009, p. 68), and the information indicates that this species continues to face pressures to its habitat. Despite Panama's participation in conservation initiatives and Panama's regulatory mechanisms in place, there are still significant pressures for resources in the great green macaw's habitat.

International Wildlife Trade (CITES)

The CITES Treaty requires Parties to have adequate legislation in place for its implementation. A complete discussion on CITES is found under Factor D for the military macaw. Within the recent past (since 2000), 261 live great green macaws were reported to have been imported by CITES reporting countries, and none of these live specimens were reported as wild origin (UNEP–WCMC CITES Trade Database, accessed December 8, 2011). Under CITES

Resolution Conference 8.4 (revised at CoP15), and related decisions of the Conference of the Parties, the National Legislation Project evaluates whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2011a). In reviewing a country's national legislation, the CITES Secretariat evaluates factors such as whether or not a Party:

- Has domestic laws that prohibit trade contrary to the requirements of the Convention;
- Has penalty provisions in place for illegal trade, and has designated the responsible Scientific and Management Authorities; and
- Provides for seizure of specimens that are illegally traded or possessed.

The CITES Secretariat determined that the legislations of Colombia, Costa Rica, Honduras, Nicaragua, and Panama are sufficient to properly implement the Treaty (*http://www.cites.org,* SC58 Doc. 18 Annex 1, p. 1). These governments were determined to be in Category 1, which means they meet all the requirements to implement CITES. Ecuador was determined to be in Category 2, with a draft plan, but not enacted (*http://www.cites.org.* SC59 Document 11, Annex p. 1, accessed December 16, 2011). This means the CITES Secretariat determined that the legislation of Ecuador meets some, but not all, of the requirements for implementing CITES. Based on the limited amount of reported international trade for this species, particularly in wild-caught specimens, the range countries, including Ecuador, have effectively controlled legal international trade of this species. Therefore, we find CITES is an adequate regulatory mechanism.

Summary of Factor D

In the range countries for this species, we recognize that conservation activities are occurring, and each country has enacted laws with the intent of protecting its species and habitat. For example, in 2002, the San Juan-La Selva Biological Corridor, an area of 60,000 ha (148,263 ac), was implemented to protect the nesting places and migration flyway of the great green macaw in Costa Rica, as far as the Nicaragua border, where very little is known about the species. However, most of the suitable habitat is restricted to protected areas in clustered locations. Oliveira *et al.* found that forests in conservation units were four times better at protecting against deforestation than unprotected areas (Oliveira *et al.* 2007, p. 1,235). Despite regulatory mechanisms established by this species' range countries and despite the species' existence in areas designated as protected, this species has experienced threats such that its populations are now so small that any pressure has a more significant effect. Parks, without management, are often insufficient to adequately protect the species. The information available with respect to the species' population numbers is extremely limited in its range countries, and the populations of this species in these countries all likely range from a few individuals to a few hundred individuals (Botero-Delgadillo and Páez 2011, p. 91; Monge *et al.* 2010, p. 22; Monge *et al.* 2009). The populations are all in relatively disconnected areas. Its suitable habitat has been severely constricted due to deforestation. In all of the range countries, there is clear evidence of threats to this species due to activities such as habitat destruction and degradation, and poaching, and there is decreased viability due to small population sizes, despite the laws and regulatory mechanisms in place. Given that the species' habitat continues to be fragmented and degraded, it is unlikely that any conservation measures are adequately mitigating the factors currently acting on the species.

Based on the best available information, despite protections in place by the respective governments, we find that the existing regulatory mechanisms are either inadequate or inadequately enforced to protect the species or to mitigate ongoing habitat loss and degradation, poaching, and severe population declines. Habitat conservation measures within these range countries do not appear to be sufficient to adequately mitigate future habitat losses. This is due to a suite of factors, such as high rates of poverty in the range of the great green macaw and subsequent pressures for resources, and conflicting management goals (such as economic development and protection of its resources) of its range countries. Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the current threats to the continued existence of the great green macaw throughout its range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size and Stochastic Events

There have been few quantitative studies of great green macaw populations (Botero-Delgadillo and Páez 2011, p. 91; Monge *et al.* 2010, p. 12; Monge *et al.* 2009.). In 2009, the combined estimate for Costa Rica and Nicaragua was 871 individuals (Monge *et al.* 2010, p. 21), and the estimate for Ecuador was fewer than 100 (Horstman 2011, p. 17). There are no current population estimates for Panama, Honduras, and Colombia, but the global population is believed to be fewer than 3,700 individuals (Monge *et al.* 2009, pp. 68, 79, 213). Small, declining populations can be especially vulnerable to environmental disturbances such as habitat loss (Harris and Pimm 2008, pp. 163–164; O'Grady 2004, pp. 513–514; Brooks *et al.* 1999, pp. 1,146–1,147). In Costa Rica, the great green macaw has been eliminated from approximately 90 percent of its former range, and one estimate indicated that there were only 275 birds remaining in 2010 (Chassot 2010 pers. comm. in Hardman 2010, p. 11). Isolated populations are more likely to decline than those that are not isolated (Davies *et al.* 2000, p. 1456), as evidenced by the Ecuadorian population. Additionally, the great green macaw's restricted range, combined with its small population size and low prospect for dispersal (Chosset *et al.* 2004, p. 32), makes the species particularly vulnerable to the threat of any adverse natural (e.g., genetic, demographic, or stochastic) and manmade (e.g., habitat alteration and destruction) events that could destroy individuals and their habitats.

The government of Costa Rica, in cooperation with Zoo Ave Wildlife Conservation Park, located in Garita de Alajuela, has participated in a captive bird breeding program (Herrero 2006, pp. 2–3) since 1994. Some of the birds produced have been released in protected areas. However, captive breeding is a controversial issue, mainly due to the reintroduction of individuals. One of the concerns is that the reintroduced birds introduce infectious diseases (which may be in dormant phase for a period of time) into the wild (Brightsmith *et al.* 2006 in Herrero 2006, pp. 2–3).

There are multiple features of this species' biology and life history that affect its ability to respond to habitat loss and alteration, as well as to stochastic environmental events. Due to its current restricted distribution and habitat requirements, stochastic events could further isolate individuals. An example of a stochastic event impacting the species occurred in 2010, and the death of several nestlings was recorded (Chosset and Arias 2010, p. 15). One nestling fell out of a tree, and, in another case, a branch fell on a nestling while it was actually in the nest and it died (Chosset and Arias 2010, p. 15). Losses such as these can have a significant effect on the population. Additionally, limited available suitable

habitat makes it difficult for the species to recolonize isolated habitat patches, which presently exist in a highly fragmented state. This, in combination with the species' nutritional needs, results in the species requiring large home ranges.

Border Conflict

One of the difficulties in the conservation of this species that may not be readily apparent is border conflict. For example, at the border of Nicaragua and Costa Rica, despite cooperation efforts; conflict continues (U.S. Department of State 2012, unpaginated; Berrios 2004, entire). The Nicaraguan-Costa Rican border is one of the most conflict-heavy frontiers in Central America (Lopez and Jimenez 2007, p. 21). Migration issues, navigation rights in border rivers, border delineation, and cultural differences all affect these countries' relations (Lopez and Jimenez 2007, p. 21). Additionally, this area has historically experienced exploitation of its natural resources. Since the beginning of last century, foreign companies have engaged in logging, rubber extraction, and mining (Lopez and Jimenez 2007, pp. 24–25). After these resources were depleted and these activities were no longer profitable, some companies left, leaving behind harmful environmental impacts (Lopez and Jimenez 2007, pp. 24–25). These activities have resulted in polluted rivers, high levels of sedimentation in coastal lagoons, and deforested areas (Lopez and Jimenez 2007, pp. 24–25). These activities all subsequently affect the habitat of the great green macaw.

Deforestation in Nicaragua has a complex history. After a civil war throughout the 1980s, land tenure policies inadvertently encouraged farming techniques that led to deforestation, soil erosion, and general land degradation (Sinreich 2009, p. 11). Later, during the 1990s, COHDEFOR opened up timber extraction opportunities to local community organizations, mainly cooperatives, to help mitigate the economic situation for local people. Licenses allowed the use of fallen wood and timber extraction for sale at local markets. However, a study conducted between 1998 and 2000 found that local groups had extracted an enormous amount of timber and there was no monitoring (Colíndres and Rubí 2002). During the period of 1994–1999, although the government offered support to communities in its border regions, tensions continue to affect the Bosawas region of Nicaragua, one of the areas believed to contain a great green macaw population (Lopez and Jiménez 2007, p. 26). Land rights disputes continue to occur in Bosawas, and land use rights are often unclear. Although the government of Nicaragua is attempting to manage these issues (Pellegrini 2011, pp. 21), conflict and practices that degrade the great green macaw's habitat persist both in the Bosawas Reserve and the Indio-Maíz Biological Reserve.

Climate Change

Our analysis under the ESA includes consideration of ongoing and projected changes in climate (see discussion under the military macaw). The 2008 workshop in Costa Rica addressed environmental disasters in the evaluation and assessment of the great green macaw, although climate change was not specifically addressed. Researchers described environmental disasters as events that occur infrequently but that can drastically affect reproduction or survival. Monge *et al.* reported that in Costa Rica, the number of active nests in 2000 was well below the average of other years. The researchers linked this with the strong El Niño event that occurred during 1997–1998 (Monge *et al.* 2009, p. 149). The researchers stated that in the last 50 years there were two major El Niño events, and, therefore, one would expect that in 100 years there would be four events of this nature, which could subsequently reduce reproduction by 30 percent (Monge *et al.* 2009, p. 149). However, this correlation between the low number of active nests and the El Niño event is not strongly supported, nor do we have supporting evidence that this is directly related to climate change. We are not aware of any information that indicates that climate change threatens the continued existence of the great green macaw.

Summary of Factor E

A species may be affected by more than one threat. Impacts typically operate synergistically, and are particularly evident when small populations of a species are decreasing. Initial effects of one threat factor can exacerbate the effects of other threat factors (Laurance and Useche 2009, p. 1432; Gilpin and Soulé 1986, pp. 25–26). Further fragmentation of populations can decrease the fitness and reproductive potential of the species, which can exacerbate other threats. Lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, even with suitable habitat patches. Within the preceding review of the five factors, we have identified multiple threats that have interrelated impacts on this species. Thus, the species' productivity may be reduced because of any of these threats, either singularly or in combination. These threats occur at a sufficient scale such that they are affecting the status of the species now and in the future.

This species' current range is highly restricted and severely fragmented. Each breeding pair requires a large home range to meet its nutritional requirements; it is a large macaw, and its sources of food are becoming scarcer and farther apart, which requires more energy consumption to locate. The susceptibility to extirpation of limited-range species can occur for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable. The species' small and declining population size, reproductive and life-history traits, and highly restricted and severely fragmented range together increase the species' vulnerability to any other stressors. Based on the above evaluation, we conclude that the effects of isolation and its small, declining population size, combined with the threats of continued fragmentation and isolation of suitable forest habitats, pose a threat to the great green macaw.

Finding and Status Determination for the Great Green Macaw

Although precise quantitative estimates are not available, the best available information suggests that populations of great green macaws have substantially declined, and this species likely persists at greatly reduced numbers relative to its historical abundance. The factors that threaten the survival of the great green macaw are: (1) Habitat destruction, fragmentation, and degradation; (2) poaching; (3) inadequacy of regulatory mechanisms to reduce the threats to the species; and (4) small population size and isolation of remaining populations.

The direct loss of habitat through widespread deforestation and conversion of primary forests to human settlement and agricultural uses has led to the fragmentation of habitat throughout the range of the great green macaw and isolation of the remaining populations. The species has been locally extirpated in many areas and has experienced a significant reduction of suitable habitat. The current suitable habitat in Costa Rica is now less than 10 percent of its original suitable habitat (Chosset *et al.* 2004, p. 38). This species exists generally in small and fragmented populations, and in many cases, the

population is so small that intense monitoring and management of the population is underway. The San Juan-La Selva Biological Corridor was established to connect forest patches and join 20 protected areas (Chosset and Arias 2010, p. 5) specifically to preserve habitat for this species.

We have very little information about the species in many parts of its range (Botero-Delgadillo and Páez 2011, p. 91; Monge *et al.* 2009, p. 68). In 2008, experts from this species' range countries attended a conference to evaluate the viability of its populations and its habitat (Monge *et al.* 2009, entire). In general, they concluded that populations are viable but they still face threats. The workshop also addressed goals for the conservation of the species; in some parts of its range, conservation efforts are intensive. Based on our review of the best available scientific and commercial information pertaining to the five factors, the threats to the species are generally consistent throughout its range. In many of the range countries, its populations are very small, and specific information about the status of the species is not available in all countries. However, habitat loss and degradation is prevalent throughout this species' range; its suitable habitat has severely contracted, and habitat loss is likely to continue into the future due to pressures for resources. Poaching is known to occur within many parts, if not all parts, of its range. Despite conservation awareness programs, poverty is prevalent within the range of the species, and the species is quite valuable commercially, so poaching continues to occur. We do not find that the effects of current threats acting on the species are being ameliorated by regulatory mechanisms . Therefore, we find that listing the great green macaw as endangered is warranted throughout its range, and we propose to list the great green macaw as endangered under the ESA.

Peer Review

In accordance with our joint policy with the National Marine Fisheries Service, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our final determination is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on our specific assumptions and conclusions regarding the proposal to list the military macaw and the great green macaw.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

The ESA and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, 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 to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the ESA. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits for endangered species are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may 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. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the ESA.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the ESA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This proposed 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 would 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.

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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, 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, or the sections where you feel lists or tables would be useful.

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are Amy Brisendine and Janine Van Norman, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding new entries for "Macaw, great green" and "Macaw, military" in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Macaw, great green	*Ara ambiguus*	Costa Rica, Honduras, Nicaragua, and Panama.	Entire	E	797	NA	NA
*	*	*	*	*	*	*	
Macaw, military	*Ara militaris*	Argentina, Bolivia, Colombia, Ecuador, Mexico, Peru, Venezuela.	Entire	E	797	NA	NA

* * * * *

Dated: May 14, 2012.

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–16492 Filed 7–5–12; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Scarlet Macaw; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2012–0039; 4500030115]

RIN 1018–AY39

Endangered and Threatened Wildlife and Plants; Listing the Scarlet Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list as endangered the northern subspecies of scarlet macaw (*Ara macao cyanoptera*) and the northern distinct vertebrate population segment (DPS) of the southern subspecies (*A. m. macao*) as endangered under the Endangered Species Act of 1973, as amended (Act). We are taking this action in response to a petition to list this species as endangered or threatened under the Act. This document, which also serves as the completion of the status review and as the 12-month finding on the petition, announces our finding that listing is warranted for the northern subspecies and northern DPS of the southern subspecies of scarlet macaw. If we finalize this rule as proposed, it would extend the Act's protections to this subspecies and DPS. We seek information from the public on this proposed rule and status review for this subspecies and DPS.

DATES: We will consider comments and information received or postmarked on or before September 4, 2012.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Search for FWS–R9–ES–2012–0039, which is the docket number for this rulemaking. On the search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to "Open" to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov*, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–ES–2012–0039; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept comments by email or fax. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the *Information Requested* section below for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, 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

I. Purpose of the Regulatory Action

We were petitioned to list the scarlet macaw, and 13 other parrot species, under the Endangered Species Act of 1973, as amended (Act). During our status review, we found that threats do not place the species at risk of extinction throughout all of its range, but do so throughout all the range of the subspecies *A. m. cyanoptera* and all the range of the northern DPS of *A. m macao*. Therefore, in this 12-month finding, we announce that listing the subspecies *A. m. cyanoptera* and the northern DPS of *A. m. macao* is warranted, and are proposing to list these entities as endangered under the Act. We are undertaking this action pursuant to a settlement agreement and publication of this action will fulfill our obligations under that agreement.

II. Major Provision of the Regulatory Action

This action is authorized by the Act. It affects Part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations. If adopted as proposed, this action would extend the protections of the Act to the subspecies *A. m. cyanoptera* and the northern DPS of *A. m. macao*.

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition ("12-month finding"). In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. We must publish these 12-month findings in the **Federal Register**.

In this document, we announce that listing the subspecies *A. m. cyanoptera* and the northern DPS of the subspecies *A. m. macao* as endangered is warranted, and we are proposing to add these entities, as endangered, to the Federal List of Endangered and Threatened Wildlife. We also find that listing the southern DPS of the subspecies *A. m. macao* under the Act is not warranted.

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses of commenters, will become part of the administrative record.

Previous Federal Actions

Petition History

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, as represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting that we list 14 parrot species under the Act. The petition clearly identified itself as a petition and included the requisite information required in the Code of Federal Regulations (50 CFR 424.14(a)). On July 14, 2009 (74 FR 33957), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information to indicate that listing may be warranted for 12 of the 14 parrot species. In our 90-day finding on this petition, we announced the initiation of a status review to list as endangered or threatened under the Act, the following 12 parrot species: blue-headed macaw (*Primolius couloni*), crimson shining parrot (*Prosopeia splendens*), great

green macaw (*Ara ambiguus*), grey-cheeked parakeet (*Brotogeris pyrrhoptera*), hyacinth macaw (*Anodorhynchus hyacinthinus*), military macaw (*Ara militaris*), Philippine cockatoo (*Cacatua haematuropygia*), red-crowned parrot (*Amazona viridigenalis*), scarlet macaw (*Ara macao*), white cockatoo (*Cacatua alba*), yellow-billed parrot (*Amazona collaria*), and yellow-crested cockatoo (*Cacatua sulphurea*). We initiated this status review to determine if listing each of the 12 species is warranted, and initiated a 60-day information collection period to allow all interested parties an opportunity to provide information on the status of these 12 species of parrots. The public comment period closed on September 14, 2009.

On October 24, 2009, and December 2, 2009, the Service received a 60-day notice of intent to sue from Friends of Animals and WildEarth Guardians, for failure to issue 12-month findings on the petition. On March 2, 2010, Friends of Animals and WildEarth Guardians filed suit against the Service for failure to make timely 12-month findings within the statutory deadline of the Act on the petition to list the 14 species (*Friends of Animals. et al.* v. *Salazar,* Case No. 10 CV 00357 D.D.C.).

On July 21, 2010, a settlement agreement was approved by the Court (CV–10–357, D. DC), in which the Service agreed to submit to the **Federal Register** by July 29, 2011, September 30, 2011, and November 30, 2011, determinations whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for no less than 4 of the petitioned species on each date. On August 9, 2011, the Service published in the **Federal Register** a proposed rule and 12-month status review finding for the following four parrot species: crimson shining parrot, Philippine cockatoo, white cockatoo, and yellow-crested cockatoo (76 FR 49202). On October 6, 2011, we published a 12-month status review finding for the red-crowned parrot (76 FR 62016). On October 11, 2011, we published a proposed rule and 12-month status review finding for the yellow-billed parrot (76 FR 62740), and on October 12, 2011, we published a 12-month status review for the blue-headed macaw and grey-cheeked parakeet (76 FR 63480).

On September 16, 2011, an extension for completing the 12-month findings with respect to the remaining four petitioned species was approved by the Court (CV–10–357, D. DC), in which the Service agreed to submit these determinations to the **Federal Register** by June 30, 2012.

In completing this status review, we make a determination whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for one of the remaining species that is the subject of the above-mentioned settlement agreement, the scarlet macaw. This **Federal Register** document complies, in part, with the last deadline in the court-ordered settlement agreement.

Information Requested

We intend that any final actions resulting from this proposed rule will be based on the best scientific and commercial data available. Therefore, we request comments or information from other concerned governmental agencies, the scientific community, or any other interested parties concerning this proposed rule. We particularly seek clarifying information concerning:

(1) Information on taxonomy, distribution, habitat selection and trends, diet, and population abundance and trends (Venezuela, northwest Columbia and other areas of Columbia outside the Amazon Biome) of this species.

(2) Information on the species historical and current status in Trinidad and Tobago.

(3) Information on the effects of habitat loss and changing land uses on the distribution and abundance of this species.

(4) Information on the effects of other potential threat factors, including live capture and hunting, domestic and international trade, predation by other animals, and any diseases that are known to affect this species or its principal food sources.

(5) Information on management programs for parrot conservation, including mitigation measures related to conservation programs, and any other private, nongovernmental, or governmental conservation programs that benefit this species.

(6) The potential effects of climate change on this species and its habitat.

In addition, for law enforcement purposes, we are considering listing scarlet macaw intraspecific crosses, and individuals of the southern DPS of *A. m. macao,* based on similarity of appearance to entities proposed for listing in this document. Therefore, we also request information from the public on the similarity of appearance of scarlet macaw intraspecific (within species) crosses, and individuals of the southern DPS of *A. m. macao,* to the entities proposed for listing in this document.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. 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. 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."

Public Hearing

At this time, we do not have a public hearing scheduled for this proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in the **ADDRESSES** section. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by August 20, 2012.

Species Information and Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened 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; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the

threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

Biological Information

Species Description

The scarlet macaw (*Ara macao*) is one of several large neotropical parrot species commonly referred to as macaws. Scarlet macaws are among the larger of the macaws, measuring 84–89 centimeters (33–35 inches) in length and weighing 900–1490 g (2.0–3.3 pounds) (Collar 1997, p. 421). They are brilliantly colored and predominantly scarlet red. Most of the head, body, tail, and underside of the wings are red. Color on the upper side of the wing appears generally as bands of red, yellow, and blue, with varying amounts of green occurring between the yellow and blue band. Lower back, rump, and tail coverts (upper tail feathers) are blue. The species has large white, mostly bare facial patches on either side of its bill. The upper bill is a light, whitish color, whereas the lower bill is black. The sexes are similar, and immature birds are similar to adults, except that immature birds have shorter tails (Collar 1997, p. 421; Wiedenfeld 1994, p. 100; Forshaw 1989, pp. 404, 406).

Taxonomy

The scarlet macaw was first described in 1758 by Linnaeus (Collar 1997, p. 421; Wiedenfeld 1994, p. 99). Wiedenfeld (1994, entire) later described the subspecies *A. macao cyanoptera*, separating it from the nominate form, *A. macao macao*. He based this separation on results of a study in which he examined the morphology of 31 museum specimens of wild birds from known locations throughout the range of the species, which extends from Mexico southward through Central America and northern South America. He describes *A. m. cyanoptera* as differing from *A. m. macao* in size and wing color. *A. m. cyanoptera* is larger than *A. m. macao*, with significantly longer wing lengths. The yellow wing coverts that are tipped in blue have no green band separating the yellow and blue as in *A. m. macao*. Wiedenfeld (1994, p. 100–101) describes *A. m. cyanoptera* as historically occurring from southern Mexico south to central Nicaragua. He describes birds from southern Nicaragua to northern Costa Rica as representing a zone of intergradation between the two forms, and the nominate form occurring from this zone southward to, and through, the South American range of the species.

The subspecies classification described by Wiedenfeld (1994, entire) is broadly used in the scientific community and the subspecies are recognized by the Integrated Taxonomic Information System (ITIS) as valid taxa (ITIS 2011, unpaginated). Further, preliminary results of recent genetic research on mitochondrial DNA of the species support Wiedenfeld's subspecies classification (Schmidt 2011, pers. comm.; Schmidt & Amato 2008, pp. 135–137). According to Schmidt and Amato (2008, p. 137), the data indicate two distinct clusters of haplogroups (groups that carry certain genetic markers potentially used to connect distant ancestry with a particular geographical region), suggesting two distinct taxonomic units, with the boundary between the clusters consistent with the southern Nicaragua and northern Costa Rica zone of intergradation described by Wiedenfeld. According to Schmidt (2011, pers. comm.), the data also show genetic differentiation between *A. m. macao* that occur on either side of the Andes, indicating two populations: One consisting of birds west of the Andes in Costa Rica, Panama, and northwest Columbia, and one consisting of birds east of the Andes in the species' South American range.

Because recent genetic research supports Wiedenfeld's subspecies classification for scarlet macaw, and because this classification is broadly accepted in the scientific community and used in the scientific literature, we consider the subspecies *A. m. macao* and *A. m. cyanoptera* as valid taxa.

Range

The range of the scarlet macaw is the broadest of all the macaw species (Ridgely 1981, p. 250). Extending from Mexico southward to central Bolivia and Brazil, it covers an estimated 6,710,000–7,030,975 square kilometers (km^2) (2,590,745–2,714,675 square miles (mi^2)) (BirdLife International (BLI) 2012, unpaginated; Vale 2007, p. 112). The majority (83 percent) of the species' current range lies within the Amazon Biome of South America (BLI 2011a, unpaginated; BLI 2011b, unpaginated; BLI 2011c, unpaginated).

Historically, the range of the scarlet macaw included the southern portion of the Mexico state of Tamaulipas southward through the states of Veracruz, Oaxaca, Tabasco, Chiapas, and Campeche; all of Belize; the Pacific and Atlantic slopes of Guatemala, Honduras, Nicaragua, El Salvador, and Costa Rica; the Pacific slope of Panama; the Magdalena Valley in Columbia; and northern South America east of the Andes in Columbia, Ecuador, Perú, Venezuela, Suriname, Guyana, French Guiana, and Bolivia and Brazil as far south as Santa Cruz and northern Mato Grosso, respectively (Wiedenfeld 1994, pp. 100–101; Forshaw 1989, p. 406; Ridgely 1981, p. 250). Some authors report the native range of the species to include Trinidad and Tobago (BLI 2011d, unpaginated; Forshaw 1989, p. 406). However, the historical record consists of only two questionable site records of the species in Trinidad and Tobago (Forshaw 1989, p. 407; Ffrench 1973, p. 76). Forshaw (1989, p. 407) suggests the species may occur in that country as a very occasional vagrant or an escapee from captivity.

Although the scarlet macaw still occurs over much of its range in South America (see *Distribution and Abundance*), its range in Mesoamerica (Mexico and Central America) has been reduced and fragmented over the past several decades as a result of habitat destruction and harvesting of the species for the pet trade (Vaughan *et al.* 2003, pp. 2–3; Collar 1997, p. 421; Wiedenfeld 1994, p. 101; Snyder *et al.* 2000, p. 150). The species has been extirpated from almost all of its former range in Mexico, all of its former range in El Salvador, and much of its former range in the rest of Central America. The species now occurs primarily in the Maya Forest region of eastern Chiapas (Mexico), northern Guatemala, and southwest Belize; in the Mosquitia region of eastern Honduras and eastern Nicaragua; in west-central Costa Rica's Carara National Park and surrounding area; in southwest Costa Rica's OSA Peninsula and surrounding area; and on Coiba Island in Panama. In addition to these populations, small groups or remnant populations of 10 to 50 individuals also occur in a few areas in the region (see *Distribution and Abundance*).

Habitat

The scarlet macaw occurs in lowland tropical forests and savanna, often near rivers (Juniper and Parr 1998, p. 425; Collar 1997, p. 421; Wiedenfeld 1994, p. 101). The species inhabits primarily tropical humid evergreen forest, but also other forest types, including riparian or gallery forest, and, in Central America, tropical deciduous forest, mixed pine and broadleaf woodland, and pine savanna (Inigo-Elias 2010, unpaginated; Collar 1997, p. 421; Wiedenfeld 1994, p. 101). In one location, it is reported to roost and nest in mangrove forest (Vaughan *et al.* 2005, p. 127). The

species generally occurs from sea level to about 500 meters (m) elevation, but has been reported ranging up to 1,500 m in Central America (Juniper and Parr 1998, p. 425; Vaughan 1983, in Vaughan *et al.* 2006, p. 919).

The scarlet macaw is considered somewhat tolerant of degraded or fragmented habitat (BLI 2011c, unpaginated; Forshaw 1989, p. 406). If not hunted or captured for the pet trade, they can survive in human-modified landscapes provided sufficient large trees remain for nesting and feeding requirements (BLI 2011c, unpaginated; Forshaw 1989, p. 406; Ridgely 1981, p. 251). They are reported occurring in landscapes that include a combination of agricultural land, pastureland, timber harvesting areas, and remnant forest patches (Vaughn *et al.* 2006, p. 920; Vaughan *et al.* 2005, p. 120; Vaughan *et al.* 2003, p. 7); partially cleared forest where large trees have been left standing (Forshaw 89, p. 407); pastureland with scattered woodlots or remnant patches of rainforest (Vaughn *et al.* 2009, p. 396; Forshaw 89, p. 407); and areas of human settlement (towns) (Guittar *et al.* 2009, p. 390). Several studies, however, indicate the species occurs in disturbed or secondary (recovering) forest habitat at lower densities than in primary (undisturbed) forest (Cowen 2009, pp. 11–15; Karubian *et al.* 2005, pp. 622–623; Lloyd 2004, pp. 269, 272).

Movements

Scarlet macaws appear to be nomadic to varying degrees (Boyd and Brightsmith 2011, *in litt.;* Collar 1997, p. 324). In some areas, scarlet macaw movements appear to be seasonal (Karubian *et al.* 2005, p. 624; Renton 2002, p. 17). Because scarlet macaws feed primarily in the canopy on seeds (see *Diet and Foraging*), they are linked to the fruiting patterns of canopy trees. Results of several studies suggest that fluctuations in abundance of these food sources may result in movements of macaws to areas with greater food availability (Haugaasen and Peres 2007, pp. 4174, 4179–4180; Moegenburg and Levey 2003, entire; Renton 2002, pp. 17–18). Parrots species can travel tens to hundreds of kilometers (km) (10 km = 6.2 miles (mi); 100 km = 62.1 mi) and are consequently able to exploit resources in a variety of habitats within the larger landscape (Lee 2010, p. 7–8, citing several authors; Brightsmith 2006, unpaginated; Collar 1997, p. 241). Recently, radio telemetry studies have been conducted on scarlet macaws in Guatemala, Belize, and Peru (Boyd and Brightsmith 2011, *in litt.;* Boyd 2011, pers. comm.). Preliminary results show great variation in the distances over which scarlet macaws range, but suggest home ranges of individuals cover hundreds of km^2 (100 km^2 = 38.6 mi^2). Of nine scarlet macaws tracked over periods of 3 to 9 months, the maximum extent of an individual's range (farthest distance between two points at which individuals were located with radio telemetry) varied from approximately 25 km (15.5 mi) to approximately 165 km (102.5 mi), with most between 25 km (15.5 mi) and 50 km (31.1 mi) (Boyd and Brightsmith 2011, *in litt.;* Boyd 2011, pers. comm.).

In addition to larger scale movements, scarlet macaws also undergo smaller scale movements between nocturnal roost sites and daily foraging areas. Conspicuous morning and evening flights to and from regularly used roost sites have been documented in several locations within the species' range (Marineros and Vaughan 1995, pp. 448–450; Forshaw 1989, p. 407).

Diet and Foraging

Scarlet macaws forage primarily in the forest canopy. They are relatively general in their feeding habits, with studies reporting as many as 52 plant species, from at least 21 plant families, consumed, including nonnative and cultivated species in some areas. The majority of plants consumed by scarlet macaws are tree species, but these plants also include bromeliads, orchids, and lichen. Seeds comprise the majority of their diet, but they also consume various quantities of fruit pulp, flowers, leaves, and bark (Dear *et al.* 2010, pp. 14–15; Lee 2010, pp. 153–160; Matuzak *et al.* 2008, p. 355; Renton 2006, p. 281; Vaughan *et al.* 2006, pp. 920, 924; Gilardi 1996 in Matuzak 2008, p. 361; Marineros and Vaughan 1995, pp. 451–452; Nycander *et al.* 1995, p. 424). In some areas scarlet macaws regularly visit clay banks where they consume soil or minerals, although it is unclear whether this provides a nutritional or other benefit to the species (Brightsmith *et al.* 2010, entire; Brightsmith 2004, pp. 136–137; Brightsmith and Munoz-Najar 2004, entire).

Fluctuations in the abundance and availability of scarlet macaw food sources may result in movements to areas with greater food availability, influencing local seasonal patterns of bird abundance (see *Movements*), or resulting in a change in diet (Lee 2010, p. 7; Cowen 2009, pp. 5, 23, citing several sources; Tobias and Brightsmith 2007, p. 132; Brightsmith 2006, unpaginated; Renton 2002, p. 17).

Social Behavior

The scarlet macaw is believed to be similar to most parrots in being monogamous and generally mating for life (Collar 1997, pp. 296, 311). As with most parrots, the scarlet macaw lives year-round in pairs (Collar 1997, p. 296; Inigo-Elias 1996, p. 77). The species is also often observed flying in small flocks of 3 or 4 that include a pair and their young of the year, or in larger flocks of 20 to 30 individuals (Vaughan *et al.* 2005, p. 120; Juniper and Parr 1998, p. 425; Marineros and Vaughan 1995, p. 448; Forshaw 1989, pp. 406–407). Up to 50 individuals may congregate at nocturnal roost sites (Juniper and Parr 1998, p. 425), although one roost site with several hundred individuals is reported in Costa Rica (Marineros and Vaughan 1995, p. 455).

Reproduction

Nest Sites

Scarlet macaws nest high above the ground in pre-existing tree cavities. The average height of scarlet macaw nest cavities ranges from 16 meters (m) (52.5 feet (ft)) to 24 m (78.7 ft) above the ground (Guittar *et al.* 2009; Anleu *et al.* 2005; Inigo-Elias 1996, p. 59; Marineros and Vaughn 1995, p. 455). Scarlet macaws are relatively flexible with respect to selection of nest cavities (Guittar *et al.* 2009, p. 391; Renton and Brightsmith 2009, pp. 3–6; Inigo-Elias 1996, pp. 92–93). They nest in a variety of tree species, including *Ceiba pentandra, Schizolobium parahybum, Vatairea lundellii, Caryocar costaricense, Acacia glomerosa, Dipteryx micrantha, Iriartea deltoidea, Erythrina* trees, and others, and nest in both live and dead trees (Guittar *et al.* 2009, pp. 389–399; Renton and Brightsmith 2009, pp. 3–4; Brightsmith 2005, p. 297; Vaughan *et al.* 2003, p. 8; Inigo-Elias 1996, p. 57; Marineros and Vaughan 1995, p. 456; Nycander *et al.* 1995, p. 431). The species also will nest in previously used cavities (Renton and Brightsmith 2009, p. 4–5; Nycander *et al.* 1995, p. 428), and will readily investigate and often nest in artificial (human-made) cavities when supplied (Brightsmith 2005, p. 297; Vaughan *et al.* 2003, p. 10; Nycander *et al.* 1995, pp. 435–436). Inigo-Elias (1996, p. 57) found that tree species used most often in the Usumacinta drainage area of southeast Mexico were used in proportion to their occurrence in the area studied.

Due to the scarlet macaw's large size, the species requires large nest cavities, which are usually found in older, larger trees. Tree cavities large enough for macaws to nest in are scarce, and the availability of suitable nest sites may limit scarlet macaw reproduction (Vaughan *et al.* 2003, pp. 10–12; Inigo-

Elias 1996, p. 92; Nycander *et al.* 1995, p. 428; Munn 1992, pp. 55–56). Intense competition for nest cavities in some areas suggests suitable cavities may be limited in these areas. Scarlet macaws are frequently observed competing for nest cavities with other macaws, including other species and other scarlet macaw pairs (Renton and Brightsmith 2009, p. 5; Vaughan *et al.* 2003, p. 10; Inigo-Elias 1996, pp.79, 96; Nycander 1995, p. 428). Scarlet macaws are also sometimes displaced from nest cavities by Africanized honeybees (see *Factor E*).

Several factors may contribute to the suitability of nest cavities. For instance, in addition to size requirements, scarlet macaws appear to select nest cavities in trees that are isolated from surrounding vegetation, possibly to protect from non-volant (unable to fly) predators (Brightsmith 2005, p. 302; Inigo-Elias 1996, p. 93).

Breeding

Large macaws are long-lived species that mature slowly and have small clutch sizes, have generally only one clutch per year, have low survival of nestlings and fledglings, have a late age of first reproduction, have a large proportion of nonbreeding adults, and have restrictive nesting requirements (Wright *et al.* 2001, p. 711; Collar 1997, pp. 296, 298; Munn 1992, pp. 53–56). Consequently, they have low rates of reproduction and are, therefore, particularly vulnerable to extinction through factors that increase their rates of mortality (Owens and Bennett 2000, p. 12146; Bennett and Owens 1997, entire).

The scarlet macaw begins breeding at 4 to 7 years of age (Clum 2008, p. 65; Brightsmith *et al.* 2005, p. 468), and the maximum breeding age is roughly estimated to be 25 years (Clum 2008, p. 65). In general, the proportion of breeding birds in a population of parrots in any given year is low (Collar 1997, p. 320). Research on three species of large macaws, including scarlet macaws, at a location free of anthropogenic disturbance suggests that only 10 to 20 percent of adult mated pairs attempt to nest in any given year (Munn 1992, pp. 47, 53–54). Scarlet macaws lay from 1 to 4 eggs (Garcia *et al.* 2008, p. 101; Collar 1997, p. 421; Inigo-Elias 1996, p. 80; Nycander *et al.* 1995, p. 430). Eggs are incubated for approximately 22–34 days, and chicks fledge at 65 to 100 days of age (Vigo *et al.* 2011, p. 147; Garcia *et al.* 2008, p. 101; Vaughan *et al.* 2003, p. 6; Collar 1997, p. 421; Inigo Elias 1996, pp. 81–82). Parental care is reported to last at least 77 days (Myers and Vaughan 2004, p. 415). The breeding season varies with location but generally occurs between October and June (Brightsmith 2005, pp. 297–299; Vaughan *et al.* 2003, p. 6; Collar 1997, p. 421; Inigo-Elias 1996, p. 87; Forshaw 1989, p. 408).

The results of several studies indicate that approximately one-third to one-half of nests fail each year (Renton and Brightsmith 2009, pp. 4–5; Garcia *et al.* 2008, p. 51; Nycander *et al.* 1995, pp. 431–432; Munn 1992, p. 54). Successful nests usually fledge only one or two young, with most (67 to 89 percent) fledging only one (Renton and Brightsmith 2009, p. 4; Clum 2008, pp. 65–66; Nycander *et al.* 1995, p. 434; Munn 1992, p. 54). Nesting successes of 0.48 to 0.89 fledglings per nest have been reported (Renton and Brightsmith 2009, pp. 4–5; Boyd and McNab 2008, p. 61; Nycander *et al.* 1995, pp. 431, 434; Munn 1992, p. 54). Several factors contribute to nest mortality, including starvation of chicks, predation of eggs or chicks, and competition for nest cavities during which eggs are crushed or chicks are killed (Renton and Brightsmith 2009, p. 5; Garcia *et al.* 2008, p. 52; Inigo-Elias 1996, p. 83; Nycander *et al.* 1995, pp. 431–434).

Distribution and Abundance

The range-wide population of the species is estimated to be approximately 20,000–50,000 (BLI 2011a, unpaginated). BLI (2011a, unpaginated) reports the global population is suspected of being in decline due to ongoing habitat destruction and overexploitation of the species. However, they believe the decline will result in less than a 30 percent decrease in the population over 10 years or three generations. A decline in the species is particularly evident in Mesoamerica, where it was formerly considered widespread but now occurs primarily in small, isolated populations where large tracts of forest remain (Wiedenfeld 1994, p. 102; Forshaw 1989, p. 406). Using 1992 estimates from Honduras, Wiedenfeld estimated the total number of scarlet macaws in Mesoamerica to be approximately 5,000 birds, consisting of 4,000 *A. m. cyanoptera* (occurring from southern Mexico to Nicaragua), and 1,000 *A. m. macao* (occurring in Costa Rica and Panama). More recently, McNab (2009, unpaginated) suggests the current population of *A. m. cyanoptera* is fewer than 1,000 birds.

Maya Forest (Mexico, Guatemala, and Belize)

Described as previously abundant in Mexico (Comisión Nacional Para el Conocimiento y Uso de la Biodiversidad (CONABIO) 2011, p. 2) and numbering in the many thousands (Patten *et al.* 2010, p. 30), the scarlet macaw is now reported to occur in only two small, isolated populations in Mexico. One population occurs in the upper Rio Uxpanapa region near San Francisco La Paz in Oaxaca (Inigo-Elias 1996, pp. 16–17). Citing several sources, Inigo-Elias (2010, unpaginated) and McReynolds (2011, *in litt.*) indicate that the upper Uxpanapa River population consists of possibly 50 scarlet macaws. According to Townsend Peterson *et al.* (2003, p. 232), it is possible that the species may occur seasonally in this area. The second population occurs in the southern Mexico and Guatemala border area of eastern Chiapas, and is discussed below.

Within the tri-national region of southern Mexico, northern Guatemala, and Belize, the species occurs in three small populations or subpopulations: (1) In the Usamacinto watershed in eastern Chiapis, Mexico, which is located in the Lacandon forest (part of the Maya Forest), Mexico's largest remaining expanse of tropical evergreen forest, and which includes the approximately 3,000 km² (1,158 mi²) Montes Azules Biosphere Reserve, several smaller protected areas, and the municipality of Maques de Commillas (United Nations Educational, Scientific, and Cultural Organization (UNESCO) 2012a, unpaginated; McReynolds 2011, *in litt.*; Enriquez *et al.* 2009, p. 13; Castillo-Santiago *et al.* 2007, pp. 1215, 1217; Inigo-Elias 1996, pp. 16–17, 23); (2) in the western Department of Peten in northern Guatemala, primarily in the Maya Biosphere Reserve (Garcia *et al.* 2008, entire); and (3) in southwest Belize, where it is known to breed only in the Chiquibul region, which includes Chiquibul National Park and other protected areas (Salas and Meerman 2008, p. 42). Based on field studies conducted from 1989 to 1993, Inigo-Elias (1996, pp. 96–97) estimated that there were "probably less than 200 breeding pairs" within Mexico's Usamacinto watershed. In Guatemala, the population is recently estimated to be between 150 and 250 birds (McNab 2008, p. 7; Wildlife Conservation Society Guatemala 2005, in McReynolds 2011, *in litt.*). Estimates from Belize are reported to vary from 60 to 219 individuals (McReynolds 2011, *in litt.*), but based on field observations in 2009, McReynolds (2011, *in litt.*) places the current Belize population at approximately 200 individuals. Garcia *et al.* (2008, pp. 52–53) estimate the total population in the tri-national Maya region, based on habitat modeling and current threats, to be 399 individuals—137 in Mexico, 159 in Guatemala, and

103 in Belize. Evidence suggests the populations in Mexico, Guatemala, and Belize are not completely isolated from one another. In a recent radio telemetry study, a fledgling radio-tagged in Guatemala flew 130 km (80.8 mi) to Mexico in one day (McReynolds 2011, *in litt.*). In addition, recent studies provide evidence of gene flow between nest sites in Guatemala and Belize, and high levels of genetic diversity in the tri-national region (Schmidt and Amato 2008, p. 137).

Clum (2008, entire) presents preliminary results of a population viability analysis (PVA) of scarlet macaws in the tri-national region. The results showed that the variable most significantly and consistently impacting population growth is the percentage of successfully breeding females (Clum 2008, p. 80). In other words, events that lower female breeding success, such as poaching and nest predation, are the most important factors limiting recovery of the species in this region. Estimated, "best guess" values were used for several variables in the baseline scenario, which indicated a probability of extinction within 100 years of 12.4 percent (± 1.5 percent SE (standard error)). However, although useful in identifying limiting factors where management should be focused, the absolute values of PVA scenario outcomes (e.g., probability of extinction within 100 years) are generally not reliable because uncertainty in the estimates of variables can introduce substantial uncertainty in predictions and dramatically change outcome values (McGowan *et al.* 2011, entire; Clum 2008, p. 80; Beissinger and Westphal 1998, entire).

Honduras and Nicaragua

Except for a remnant population of approximately 12 or 13 pairs on the Peninsula of Cosigüina on the Pacific slope of Nicaragua (Lezama 2011, pers. comm.), the distribution of the species in these countries is now primarily limited to eastern Honduras and eastern Nicaragua. Wiedenfeld (1994, pp. 101–102) estimated the total population of Honduras to be 1,000 to 1,500 birds, located in the provinces of Olancho, Gracias a Dios, and Colon in the Mosquitia, a region of extensive forest straddling the eastern Honduras-Nicaragua border. Currently, the species occurs in eastern Olancho, western Gracias a Dios, and southeastern Colon (Portillo Reyes 2005, p. 71). The region includes several thousand square kilometers in protected areas, including the Plátano Biosphere Reserve (5,000 km² (1,931 mi²)) in Honduras, and the Bosawás Biosphere Reserve (21,815 km² (8,423 mi²)) in adjacent Nicaragua (UNESCO 2012b, unpaginated; UNESCO 2012c, unpaginated; Vallely *et al.* 2010, p. 52). McReynolds (2011, *in litt.*) estimates the population of the Rus Rus area of the Honduran Mosquitia alone to be 1,000 to 1,500 birds, based on the number of chicks reported as poached by Portillo Reyes *et al.* (2004, in McReynolds 2011, *in litt.*) and assuming a 20 percent reproductive success rate. Based on literature sources from the 1990s, Anderson *et al.* (2004, p. 465) report the scarlet macaw as "common" within the Honduran Mosquitia. More recent information, however, indicates that loss of habitat and demand for the pet trade has put the species in danger of extinction in this region (Portillo Reyes 2005, in Portillo Reyes *et al.* 2010, p. 6).

Wiedenfeld (1995, in Snyder *et al.* 2000, p. 150) estimated the Nicaragua population of scarlet macaw to be 1,500 to 2,500 birds. However, the species was not detected during either of two national surveys of parrots conducted in 1999 and 2004 (Lezama *et al.* 2004, in McReynolds 2011, *in litt.*). The species is currently thought to number up to 700 in Nicaragua, with groups of 30 to 40 scarlet macaws frequently reported in the Rio Coco area, which forms the border with Honduras (Lezama 2010, in McReynolds 2011, *in litt.*). Feria and de los Monteros (2007, in McReynolds 2011, *in litt.*), however, consider the number in eastern Nicaragua to be fewer than 100 birds.

Costa Rica

Vaughan *et al.* (1991, abstract) describe scarlet macaws as having previously occurred in tropical wet and dry forests throughout most of Costa Rica, while Ridgely (1981, p. 252) describes the species as having always occurred primarily on the Pacific slope of the country. Dear *et al.* (2010, p. 8) describe the species as currently occurring in only two viable populations: In central Costa Rica's Central Pacific Conservation Area (ACOPAC) in the region of Carara National Park (approximately 450 birds) (Arias *et al.* 2008, in McReynolds 2011, *in litt.*), and in southwest Costa Rica's Osa Conservation Area (ACOSA) in the region of Corcovado National Park and the Osa Peninsula (estimates ranging from between 800 and 1,200 to 2,000 birds) (Dear et al. 2005 and Guzman 2008, in McReynolds 2011, *in litt.*). These two populations appear to be genetically isolated (Nader *et al.* 1999, entire). Dear *et al.* (2010, p. 8) report that small groups of 10 to 25 individuals are also found in other parts of the country, including Palo Verde (Pacific slope of northwest Costa Rica), Barra del Colorado (Atlantic slope of northeast Costa Rica), and Estrella Valley (Atlantic slope of southeast Costa Rica), and that the species has been released in several areas on the Pacific coast. Further, Penard *et al.* (2008, in McReynolds 2011, *in litt.*) report a population of 48 to 54 birds in Maquenque National Wildlife Refuge, on the Atlantic slope border with Nicaragua, and according to Chassot (2011, pers. comm.), this population appears to be increasing. Based on plausible regional estimates, McReynolds (2011, *in litt.*) estimates the current population for the country to be about 1,800 birds.

Citing Chassot *et al.* (2006), McReynolds (2011, *in litt.*) indicates that in a 2006 review of all parrot populations in Costa Rica, participants believed the scarlet macaw was most accurately described by the International Union for the Conservation of Nature (IUCN) category of "Minor Risk-Almost Threatened." Vaughan *et al.* (2005, entire) show that in 1995, the scarlet macaw population in the ACOPAC region was declining, due primarily to poaching of nestlings for the pet trade, and that the population increased following intensive conservation efforts in 1996 and 1997. In ACOSA, Dear *et al.* (2010, p. 10) indicate that 85.percent of residents interviewed in 2005 believed scarlet macaws were more abundant than 5 years prior, which suggests this population may be increasing.

Panama

Ridgely (1981, p. 253) describes the species as almost extinct on the mainland of Panama, but "abundant" and occurring in "substantial numbers" on Coiba Island, which, at the time, was a penal colony where settlement and most hunting was prohibited. McReynolds (2011, *in litt.*) provides a review of the more recent available information on distribution and abundance in the country as follows:

> Panama has very few Scarlet Macaws. The last sightings of Scarlet Macaws in the border region of Panama and Costa Rica, the area of the upper Rio Corotu (or Rio Bartolo Arriba) near Puerto Armuelles in the Chiriquí province, occurred in 1998 (Burica Press, 2007). There is a small, but unknown number, in Cerro Hoya National Park in the southwest corner of the Azuero Peninsula of Veraguas (Rodriguez & Hinojosa, 2010). The current population of Scarlet Macaws in Panama is very likely less than 200. Isla Coiba remains the last large stronghold, with a rumored estimate of 100 individuals (Keller & Schmitt, 2008), or "large populations" (Barranco, 2009).

South America

Within northern South America, the scarlet macaw currently occurs primarily in the Amazon Biome of eastern Columbia, Venezuela, Guyana, Suriname, French Guyana, Brazil, northeast Ecuador, eastern Peru, and northern Bolivia (collectively referred to in this document as the Amazon) (BLI 2011a, unpaginated; Inigo-Elias 2010, unpaginated; Juniper and Parr 1998, p. 425; Collar 1997, p. 421; Forshaw 1989, pp. 406–407). The Amazon comprises not only most of the South America range of the species but also approximately 83 percent of its world range (BLI 2011c, unpaginated). The scarlet macaw is also reported to occur in relatively small areas outside the Amazon, including in parts of several northern Venezuelan states (Hilty 2003, p. 327) and west of the Andes in northwest Columbia (Hilty and Brown 1986, p. 200).

Using Panjabi's (2008, in BLI 2011a, unpaginated) estimate of fewer than 50,000 for the range wide population, and Wiedenfeld's (1994, p. 102) estimate of 5,000 for Mesoamerica, the South American population of the scarlet macaw can be very roughly estimated to be fewer than 45,000 birds. The species is generally considered common over much of its South American range, especially in the Amazon Basin (Hilty 2003, p. 327; Angehr *et al.* 2001, p. 161; Juniper and Parr 1998, p. 425; Collar 1997, p. 421; Forshaw 1989, p. 406; Hilty and Brown 1986, p. 200; Ridgely 1981, p. 251). Juniper and Parr (1998, p. 425) describe the species as evidently declining throughout its range due to habitat loss, trade, and hunting. Others report it as having declined around major population centers and settlement areas (Ridgely 1981, p. 251; Forshaw 1989, p. 407).

We are aware of little recent information on local (country, region) populations within South America. Lloyd (2004, p. 270) provides the only local population estimate we are aware of, which includes the Tambopata Province of Peru. Using density estimates calculated from field counts in different forest types, and area of forest cover presented in Kratter (1995, in Lloyd 2004, p. 269), Lloyd calculated the Tambopata population to number from 4,734–24,332 individuals. The species was previously described as uncommon, locally extirpated in areas, and declining in eastern Peru (Inigo-Elias 2010, unpaginated, citing several sources; Brightsmith 2009, *in litt.*; Forshaw 1989, p. 407, citing several sources). In 2004, the scarlet macaw was classified as "Vulnerable" in Peru, likely due to concerns about overexploitation for the pet trade (Brightsmith 2009, *in litt.*). However, a 2009 species review classified the species in Peru at the lower threat category of "Near-Threatened" based on (1) evidence suggesting the pet trade threat is lower than previously believed, and (2) the proximity of scarlet macaws in Peru to the existence of "large populations" in adjacent Ecuador, Brazil, Bolivia, and Columbia (Brightsmith 2009, *in litt.*).

The remaining information on the species' populations in South America is qualitative. Citing several published works from the 1970s and 1980s, Forshaw (1989, p. 407) described the scarlet macaw as locally extirpated from areas of northeastern Ecuador and northeastern Bolivia. In the lowland Ecuadorian Amazon, scarlet macaws are reported to have suffered a rapid decline in recent decades and are considered a "Near-Threatened" species in Ecuador (Ridgely and Greenfield 2001, in Karubian *et al.* 2005, p. 618). The species is believed to be common in the Orinoco and Amazon Basins in Columbia, patchily distributed and becoming rare in Venezuela, and occurring in large numbers throughout the Amazon in Brazil (Inigo-Elias 2010, unpaginated, citing several sources).

Conservation Status

The scarlet macaw is listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) 2012, unpaginated). The species is currently classified as "Least Concern" by the IUCN. In 2011, BLI proposed reclassifying the scarlet macaw from IUCN "Least Concern" to "Threatened," based on the area of Amazon habitat projected to be lost to deforestation by 2050 (BLI 2011b, unpaginated; BLI 2011e, unpaginated). However, based on review and recommendations from regional experts, a current revision of the proposal recommends the species remain classified as "Least Concern" due to its level of tolerance of degraded and fragmented habitat (BLI 2011c, unpaginated).

The scarlet macaw is considered in danger of extinction in Mexico (Government of Mexico 2010a, p. 64), Belize (Biodiversity and Environmental Resource Data System of Belize 2012, unpaginated; Meerman 2005, p. 30), Costa Rica (Costa Rica Sistema Nacional de Areas de Conservacion 2012, unpaginated), and Panama (Fundación de Parques Nacionales y Medio Ambiente 2007, p. 125). The species is also on Guatemala's *Listado de Especies de Fauna Silvestre Amenazadas de Extinción (Lista Roja de Fauna)* (list of species threatened with extinction (red list of fauna)) (Government of Guatemala 2001, p. 15), Honduras's *Listado Oficial de Especies de Animales Silvestres de Preocupación Especial en Honduras* (Official List of Species of Wild Animals of Special Concern in Honduras) (Secretaria de Recursos Naturales y Ambiente. 2008, p. 62), and Nicaragua's list of species for which the season of use (e.g., for harvest or capture) is indefinitely closed (Nicaragua Ministerio del Ambiente y Los Recursos Naturales 2010, entire). In South America, the species is listed as vulnerable in Peru (Government of Peru 2004, p. 276855), but a more recent evaluation of the species categorizes it at the lower threat level of "near threatened" (Brightsmith 2009, *in litt.*). The species is also categorized as "near threatened" in Ecuador (Ridgely and Greenfield 2001, in Karubian *et al.* 2005, p. 618) and as "near threatened" on Venezuela's red list (Rodriguez and Rojas-Suarez 2008, p. 50). We are unaware of the scarlet macaw having official conservation status in any other of the species' range countries.

Conservation Measures

Some of the current range of the scarlet macaw is located within officially designated protected areas (see *Distribution and Abundance*). Other conservation measures employed in some areas of the species' range include increasing the presence of agency or organization personnel in nest areas to deter nest poaching, introduction of captive-reared birds into the wild, re-introduction of wild-caught birds into the wild, placement of artificial nest boxes within nesting areas, and public outreach and community organization efforts (Wildlife Conservation Society (WCS) 2010, pp. 2–3; WCS 2009, pp. 2–3; Garcia *et al.* 2008, p. 54; WCS 2008, entire; Brightsmith *et al.* 2005, entire; *Dear et al.* 2005, abstract; Vaughan *et al.* 2005, entire; Vaughan *et al.* 2003, entire; Brightsmith 2000a, entire; Brightsmith 2000b, entire; Vaughan *et al.* 1999, entire; Nycander *et al.* 1995, entire). To the extent that we have information indicating the effects of these measures on the scarlet macaw's status, they are considered and discussed within our evaluation of threats below.

Evaluation of Threats

Introduction

This status review focuses on the scarlet macaw populations in Mexico's southeastern state of Chiapas; Central America; and the Amazon Biome in South America. Although the species is also reported to occur in small numbers in Oaxaca, Mexico, and areas of Venezuela and Columbia that lie outside the Amazon, there is little information on the species in these areas and these areas constitute a relatively small fraction of the species' worldwide range. As discussed above, the Amazon constitutes 83 percent of the species' world range (BLI 2011c, unpaginated), and most information from South America is from the Amazon. However, we request information from the public on the status of, and threats to, scarlet macaws that occur in South America outside the Amazon, and in Oaxaca, Mexico.

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

One of the main threats to neotropical parrot species, in general, is loss of forest habitat (Snyder *et al.* 2000, p. 98). Deforestation (conversion of forest to other land uses such as agriculture) and forest degradation (reduction in forest biomass, such as through selective cutting of trees or fire) occur across much of the range of the scarlet macaw. The primary cause is conversion of forest to agriculture (crop and pasture), although other land uses, including construction of roads and other infrastructure, logging, fires, oil and gas extraction, and mining also contribute significantly and to varying degrees in different areas of the species range (Blaser *et al.* 2011, pp. 263, 290, 299, 310, 334, 344, 354, 363–364, 375, 394; Boucher *et al.* 2011, entire; Clark and Aide 2011, entire; Food and Agriculture Organization (FAO) 2011a, p. 17; May *et al.* 2011, pp. 7–13; Muller and Patry 2011, p. 81; Nasi *et al.* 2011, pp. 203–204; Pacheco 2011, entire; DeFries *et al.* 2010, abstract; FAO 2010a, p. 15; Government of Costa Rica 2010, pp. 38–39; Jarvis *et al.* 2010, entire; Belize Ministry of Natural Resources and Environment 2010, pp. 41–45; Armenteras and Morales 2009, pp. 134–176; Garcia *et al.* 2008, pp. 50–51; Grau and Aide 2008, unpaginated; Harvey *et al.* 2008, p. 8; Kaimowitz 2008, pp. 487–491; Mosandl *et al.* 2008, pp. 38–39; Nepstad *et al.* 2008, entire; Foley *et al.* 2007, pp. 26–27; Barreto *et al.* 2006, entire; Fearnside 2005, pp. 681–683; Carr *et al.* 2003, entire). Deforestation poses a potential threat to the scarlet macaw because it directly eliminates the species' tropical forest habitat, removing the trees that support the species' nesting, roosting, and dietary requirements. It may also result in fragmented habitat that reduces and isolates populations; as fragments are reduced, they are less likely to provide resources for species that require large areas, and small areas of forest may only support small populations of a species (Ibarra-Macias 2009, entire, citing several sources; Lees and Peres 2006, entire; Lindenmayer and Fischer 2006, in Ibarra-Macias *et al.* 2011, p. 703). Fragmented habitat could potentially compromise the genetics of these populations through inbreeding depression and genetic drift (see *Factor E*).

Forest degradation poses a threat to the species because it may reduce the number of trees in an area. Although scarlet macaws are known to use partially cleared and cultivated landscapes (see *Habitat*), they are only able to do so if the landscape maintains enough adequate large trees to support the species' nesting and dietary requirements. A reduced number of trees may reduce the availability of adequate nest sites and food resources across the landscape, resulting in a reduction in the number of scarlet macaws the landscape can support and, thus, a reduction in the species' population. Scarlet macaws are especially dependent on larger, older trees because these trees provide the large nesting cavities required by the species. One of the causes of forest degradation within the species' range, selective logging, generally targets older, larger trees, thus posing a threat to parrot populations by creating a shortage of suitable nesting sites, increasing competition, and causing the loss of current generations through an increase in infanticide and egg destruction (Lee 2010, pp. 2, 12).

Deforestation and forest degradation also pose a threat to scarlet macaws through indirect effects. In the absence of management for maintenance of tree density or regeneration, forest degradation may eventually lead to full deforestation or degradation to low-stature brush ecosystems (Boucher *et al.* 2011, p. 6; May *et al.* 2011, pp. 11, 13–16; Nasi *et al.* 2011, p. 201; Gibbs *et al.* 2010, p. 2; Government of Mexico 2010b, p. 32; Nepstad *et al.* 2008, pp. 1739–1740; Foley *et al.* 2007, pp. 26–27; Killeen 2007, pp. 25–27; Fearnside 2005, pp. 682–683). Also, clearing or degradation of forests often provides easier access by humans to previously inaccessible areas inhabited by the species. Easier access by humans increases the vulnerability of species to overexploitation (Peres 2001, entire; Putz *et al.* 2000, pp. 16, 23) (see *Factor B*) and also threatens the species because increased access to forests is also often followed by full deforestation as lands are cleared for agricultural use (Kaimowitz and Angelsen 1998, in Putz *et al.* 2000, p. 16).

Below we provide a summary of information on deforestation and forest degradation within the range of the scarlet macaw.

Mesoamerica

Destruction of forest habitat is one of the main causes of the decline of the scarlet macaw in Mesoamerica (CONABIO 2011, p. 5; Lezama 2011, pers. comm.; McGinley *et al.* 2009, p. 11; Garcia *et al.* 2008, p. 50; Hansen and Florez 2008, pp. 48–50; Snyder *et al.* 2000, p. 150; Collar 1997, p. 421; Forshaw 1989, p. 406; Ridgely 1981, pp. 251–253). Although much of the species' habitat within South America remains intact, the habitat of the species in Mesoamerica has changed substantially over the past several decades as a result of deforestation. Mesoamerica has had among the highest deforestation rates in the world, and all countries in the region lost much (up to 50 percent) of their forest during recent decades (Bray 2010, pp. 92–95; Kaimowitz 2008, p. 487; Carr *et al.* 2006, pp. 10–11; Dejong *et al.* 2000, pp. 506; Rzedowski 1978, in Masera *et al.* 1997, p. 273). The remaining forest is fragmented and includes few large tracts of forest habitat (Bray 2010, pp. 92–93; Snyder *et al.* 2000, p. 150; Wiedenfeld 1994, p. 101). Although deforestation rates have declined in Mesoamerica during the past two decades, they are still very high (FAO 2010a, pp. 232–233; Kaimowitz 2008, p. 487) and include the loss of significant amounts of primary forest (FAO 2010a, pp. 55, 259). Further, deforestation is occurring rapidly in many areas within the range of the scarlet macaw in this region, including in Chiapas, Mexico, western Petén in Guatemala; eastern Olancho in Honduras; and eastern Nicaragua (Kaimowitz 2008, p. 487).

Mexico

During 1990–2010, Mexico lost approximately 6 million hectares (ha) (approximately 15 million acres (ac)) of forest, and had one of the largest decreases in primary forests worldwide (FAO 2010a, pp. 56, 233). Although Mexico's rate of forest loss has slowed in the past decade, it continues at a rate of 1,550 km^2 (598 mi^2) per year, with an estimated 2,500–3,000 km^2 (965–1,158 mi^2) per year degraded (FAO 2010a, p.

233; Government of Mexico 2010c, in Blaser *et al.* 2011, p. 344). Most of Mexico's remaining scarlet macaws occur in the Lacandon Forest of the southeastern state of Chiapas (see *Distribution and Abundance*). The main drivers of deforestation and forest degradation in this region are conversion of forest to pasture and agriculture, and uncontrolled logging (overexploitation and illegal logging) (Government of Mexico 2010b, pp. 22–24; Jimenez-Ferrer *et al.* 2008, p. 195–196; Castillo-Santiago *et al.* 2007, p. 1217; Oglethorpe *et al.* 2007, p. 85). In southeastern Mexico, the area of land devoted to cattle farming has increased dramatically due to the increase of regional meat prices and a decrease in the economy of staple crop cultivation (Jimenez-Ferrer *et al.* 2008, pp. 195–196). The state of Chiapas encourages cattle farming through subsidies (Enriquez *et al.* 2009, p. 58), and clearing of forest for pasture in the state is ongoing (Enriquez *et al.* 2009, p. 48–49). Chiapas has the second highest rate of deforestation of Mexico's 31 states, with recent forest losses averaging approximately 600 km^2 (232 m^2) per year (Masek *et al.* 2011, p. 10). Cattle farming is the most profitable activity within the Lacandon Forest and is extensive in the region (Jimenez-Ferrer *et al.* 2008, pp. 195–196). Deforestation risk outside protected areas in the Lacandon Forest is primarily categorized as high to very high. Inside protected areas, the risk of deforestation is categorized as low to very low (Secretaria de Medio Ambiente y Recursos Naturales 2011, unpaginated). Monte Azules Biosphere Reserve is the largest protected area in the Lacandon Forest, and studies indicate that it has been relatively successful at conserving the resources within its boundaries (Castillo-Santiago *et al.* 2007, pp. 1223–1224; Figueroa and Sanchez-Cordero 2008, p. 3231). However, according to Enriquez *et al.* (2009. pp. 28, 57), the reserve is one of 32 priority forest regions defined by Mexico's Federal Environmental Protection Agency in which more than 60 percent of illegal logging in the country occurs. Although illegal logging has received more attention from Mexico's policy makers recently, efforts to address the problem have had limited success due to insufficient human and financial resources to enforce laws effectively, and poorly designed control efforts (Blaser *et al.* 2010, p. 346; Enriquez *et al.* 2009, p. 57; Kaimowitz 2008, p. 491). Ongoing illegal logging within the reserve is likely degrading the reserve's forests, as illegal logging is usually conducted using unsustainable methods (Enriquez *et al.* 2009, p. 56). Degradation through illegal logging may affect nesting trees and food resources, and may result in future deforestation if not effectively addressed. While we are unaware of information on projected future rates of deforestation specifically in the Lacandon Forest region, Diaz-Gallegos *et al.* (2010, p. 194) project a loss of approximately 20,000 km^2 (7,722 mi^2) between 2000 and 2015 in the southeastern States (which include Chiapas), assuming the same rate of loss as occurred during the period 1987–2000. Further, by 2030, forest area in Mexico as a whole is projected to decrease, with anywhere from about 10 percent to nearly 60 percent of mature forests lost, and approximately 0 to 54 percent of regrowth forests lost (Commission for Environmental Cooperation 2010, pp. 45, 75).

Although Mexico implements several forest conservation measures and has made significant progress in conserving forest within its boundaries (Blaser *et al.* 2011, pp. 344–346; Center for International Forestry Research (CIFOR) 2010, pp. 34–39; Masek *et al.* 2011, p. 17; FAO 2010a, p. 233; Perron-Welch 2010, entire; Enriquez *et al.* 2009, pp. 4, 36–41; Munoz-Pina *et al.* 2008, entire; Karousakis 2007, pp. 24–25, 29), we consider deforestation and forest degradation to be an immediate threat to the species in Mexico because (1) clearing of forest for pasture is ongoing in Chiapas, (2) the Lacandon Forest outside of protected areas is at high to very high risk of deforestation, (3) illegal logging is ongoing in the largest reserve in the Lacandon Forest and attempts to address the problem of illegal logging in Mexico have had limited success, and (4) deforestation is projected to continue in Mexico as a whole and in the southeastern states.

Guatemala, Belize, Honduras, and Nicaragua

With the exception of Belize, the countries of northern Central American have the highest rates of deforestation in Latin America. Guatemala, Honduras, and Nicaragua lost 560 km^2 (216 mi^2) (or 1.47 percent), 1,200 km^2 (463 mi^2) (or 2.16 percent), and 700 km^2(270 mi^2) (or 2.11 percent) per year, respectively, between 2005 and 2010 (FAO 2010a, p. 232). Belize, has a much lower deforestation rate (100–150 km^2 (39–58 mi^2) (0.3–0.68 percent) per year (Cherrington *et al.* 2010, p. 22; FAO 2010a, p. 232)), but deforestation and forest degradation is increasing in the Chiquibal region, the only region in which scarlet macaws are known to nest in the country (Belize Ministry of Natural Resources and Environment 2010, pp. 44–45; Salas and Meerman 2008, pp. 22, 42).

The main causes of deforestation and forest degradation within the range of the scarlet macaw in these countries include clearing for agriculture and cattle pasture, illegal colonization in protected areas, illegal logging, purposefully set fires, and, in some areas, activities related to drug trafficking. Some or all of these activities are ongoing in areas occupied by the species, including in the Maya Biosphere Reserve in Guatemala, Rio Platano Biosphere in Honduras, Bosawas Biosphere Reserve in Nicaragua, and the Chiquibul region in Belize, resulting in the loss of significant amounts of forest area in locations in which the few remaining scarlet macaw populations in these countries occur (Blaser et al. 2011, pp. 310, 334; Friends for Conservation and Development 2011, pp. 1, 4; Muller and Patry, 2011, pp. 80–81; Radachowsky *et al.* in press, pp. 5–7; UNEP–WCMC 2011a, unpaginated; UNESCO 2011a, unpaginated; UNESCO 2011b, unpaginated; Belize Ministry of Natural Resources and the Environment 2010, pp. 44–46; Bray 2010, pp. 100–106; Tolisano and Lopez-Selva 2010, pp. 3–4; Anderson and Devenish 2009, pp. 256–257; Government of Honduras 2009, unpaginated; McGinley *et al.* 2009, pp. 13, 33–36; McNab 2009, unpaginated; Muccio 2009, p. 14; Davalos and Bejarano 2008, p. 223; Garcia *et al.* 2008, pp. 50–54; Grau and Aide 2008, unpaginated; Hansen and Florez 2008, p. 21; Kaimowitz 2008, pp. 487, 490; Reynolds 2008, p. 6; Wade 2007, entire; Parkswatch 2005, unpaginated; Conservation International 2004, pp. 13–14; Parkswatch 2003, p. 1; Richards *et al.* 2003, entire; WCS undated, pp. 10–11). Deforestation and forest degradation are exacerbated in this region by the combination of weak governance (e.g., limited resources and capacity for law enforcement, lack of reasonable enforcement strategies, poorly designed and complex legislation, corruption, and weak commitment in judicial systems), increasing human populations placing demands on forest resources, and the increasing presence of drug trafficking and other illegal activities, which create an environment of insecurity and undermine conservation efforts (Boucher *et al.* 2011, p. 11; Larson and Petkova 2011, p. 100; Pellegrini 2009, pp. 15–19; UNESCO 2011a, unpaginated; WCS 2011, p. 4; Balzotti 2010, pp. 4, 15, citing several sources; Belize Ministry of Natural Resources

and Environment 2010, pp. 5, 41–42, 45; Meerman and Cayetano 2010, pp. 32–33; Science for Environment Policy 2010, entire; Tolisano and Lopez-Selva 2010, pp. 2, 38, 42–43, 47–49; Union of Concerned Scientists 2010, unpaginated; WCS 2010, p. 4; McGinley *et al.* 2009, pp. 34–37; WCS 2009, pp. 5–6; Davalos and Bejarano 2008, p. 223; Hansen and Florez 2008, pp. 21–26; Salas and Meerman 2008, pp. 43–45; Bray *et al.* 2008, unpaginated; Kaimowitz 2008, pp. 488, 490; Oglethorpe *et al.* 2007, p. 87; Conservation International 2004, pp. 3, 12–13; Richards 2003, entire). Although forest conservation efforts in Guatemala's Maya Biosphere are currently preventing further habitat loss in the range of about 75 percent of Guatemala's scarlet macaw population (Boyd and McNab 2008, pp. v–vi), this area is currently unstable (Human Rights Watch 2012, pp. 1–2; United Nations High Commissioner for Human Rights in Guatemala 2012, pp. 6, 14; U.S. Department of State 2012, unpaginated; Dudley 2011, pp. 12–13, 15; Southern Pulse 2011, unpaginated; Radachowsky *et al.* in press, p. 5; Dudley 2010, p. 14; Farah 2010, unpaginated; Schmidt 2010, unpaginated; Muccio 2009, p. 14; Parkswatch 2005; Parkswatch 2003). Several high-profile violent crimes in the area during 2010–2011 resulted in violent confrontations between authorities and organized criminals and a declaration of a state of siege in the area by Guatemala's president and cabinet (WCS 2011, p. 4). The increased violence and fear of retaliation by criminals has hindered enforcement and prosecution of law in the area, and, along with turnover in political administrations and key political and agency personnel, pose significant risk to forest conservation efforts in the Maya Biosphere Reserve (WCS 2011, pp. 4–5; WCS 2010, pp. 4–5).

Although forest conservation measures exist in the other countries in this region (Belize Ministry of Natural Resources and Environment 2010, pp. 54–58; Bray 2010, pp. 99, 102–103, 106; Hansen and Florez 2008, pp. 9–12, 17–20; Kaimowitz 2008, pp. 488–491; McGinley *et al.* 2009, pp. 27–33), we are unaware of any information indicating these conservation measures are significantly reducing deforestation and forest degradation within the current range of the species. For this reason, and because (1) the much reduced and limited forest habitat in these countries is still being cleared in these countries, and (2) the habitat of up to 25 percent of Guatemala's population is still at high threat of being deforested or degraded, and the protection of the other 75 percent appears tenuous, we consider deforestation and forest degradation to be occurring a level that poses a significant and immediate threat to scarlet macaws in all four countries in this region.

Costa Rica and Panama

Costa Rica experienced some of the highest rates of deforestation in the world during past decades (Bray 2010, p. 107; Government of Costa Rica 2010, p. 68). As a result of deforestation, the country's forest cover declined from 67 percent in 1940, to 17–20 percent in 1983 (Bray 2010, p. 107), and in 1993, only 20 percent of original scarlet macaw habitat remained, all within protected areas (Marineros and Vaughan 1995, pp. 445–446). However, during the 1990s, Costa Rica implemented several forest conservation strategies, including new laws protecting forests and mechanisms of payment for ecosystem services (Bray 2010, pp. 107–109; Kaimowitz 2008, pp. 488–491; Pagiola 2008, entire; Sanchez-Azofeifa *et al.* 2003, entire). Subsequently, forest cover has been increasing in the country (a process referred to as afforestation). Costa Rica is the only country in Central America to experience a positive change in forest cover. Between 2000 and 2010, Costa Rica had afforestation rates of between 0.90 and 0.95 percent per year (FAO 2010a, p. 232), and total forest cover in 2005 was estimated to be 53 percent (Government of Costa Rica 2010, p. 68), more than double the country's forest cover in the 1980s. Some level of deforestation still occurs in some areas of the country due to illegal logging in private forests, illegal activities in national parks and reserves, and expansion of agriculture and livestock activities (Government of Costa Rica 2011, p. 2; Government of Costa Rica 2010, pp. 10–11, 38, 52–54; Parks in Peril 2008, unpaginated). Corcovado National Park, the largest protected area in ACOSA, has been identified as one of the protected areas in Costa Rica most affected by deforestation close to its boundaries (Sanchez-Azofeifa *et al.* 2003, pp. 128–129). However, the scarlet macaw population in this region appears to be increasing (see *Distribution and Abundance*), and we are unaware of any information indicating that deforestation or forest degradation in the current range of the scarlet macaw in Costa Rica is occurring at a level that is causing or likely to cause a decline in the species. The government of Costa Rica has proposed building an international airport in ACOSA, where the larger of Costa Rica's two populations of scarlet macaws occurs (Driscoll *et al.* 2011, p. 9; Walsh 2011, unpaginated). So far, the remoteness of the ACOSA has deterred large-scale development in the region. If the airport is built, it may lead to development of the region in the form of large-scale resorts, vacation homes, new roads, and other infrastructure, placing the habitat of the ACOSA population of scarlet macaws at high risk of accelerated deforestation (Driscoll 2011, p. 9; Natural Resources Defense Council 2011, unpaginated). However, based on the available information, whether or when the airport will be built, and the nature of subsequent development in the region, is speculative at this time. Therefore, it is not appropriate to make a determination of the scarlet macaw's status in the country, for the purposes of listing under the Act, based on this potential development project.

Deforestation in Panama is relatively low for the Mesoamerica region (120 km^2 (46 mi^2), or 0.36 percent, per year) (FAO 2010a, p. 232). Deforestation in the country currently occurs primarily in the Darien, Colon, Ngabe Bugle, and Bocas del Toro provinces (Blaser *et al.* 2011, p. 354), which are outside the range in which scarlet macaws in Panama are currently reported to occur. As mentioned above (see *Distribution and Abundance*), most of Panama's scarlet macaw population occurs on Coiba Island. Coiba Island, which is approximately 494 km^2 (191 mi^2), was used by the government of Panama as a penal colony until 2004, which limited previous human access and development on the island (Government of Panama 2005, p. 23; Steinitz *et al.* 2005, p. 26). Consequently, forests on the island remain largely intact. Coiba National Park was established, by law, in 2004, and is currently a World Heritage Site (Suman *et al.* 2010, p. 7; Government of Panama 2005, p. 11). Available information indicates that some level of deforestation or forest degradation on the island is occurring as the result of vegetation trampling and soil erosion by a herd of approximately 2,500 to 3,500 feral cattle (Smithsonian Tropical Research Institute 2011, unpaginated; Suman *et al.* 2010, p. 25). Although the removal of cattle from Coiba National Park is considered a priority issue (Suman *et al.* 2010, p. 25), the cattle removal effort has had few results to date (UNESCO 2011c, p. 61). The herd is reported to be growing and increasingly impacting the island's vegetation (Smithsonian Tropical Research Institute 2011, unpaginated), although the extent of this impact is

unknown. Because Coiba National Park has been classified as a World Heritage Site, UNESCO evaluates threats to the park using a standard method it developed for this purpose. They categorize threats to Coiba National Park as increasing since 2008 (UNESCO 2012d, unpaginated). The United Nations (UNESCO 2011c, pp. 59–63; UNEP–WCMC 2011b, unpaginated) reports several potential threats to the park, including insufficient capacity to control expected pressures from fishing, tourism, and possible illegal colonization and logging; delayed implementation of management plans; and impacts of a newly constructed naval station on Coiba Island. Although we are unaware of information on the probability or extent of impacts to scarlet macaw habitat from these threats, the World Heritage Centre and IUCN concluded that the main conservation concerns regarding this site remain poorly addressed.

Evidence suggests that within southern Central America, deforestation and forest degradation are a current threat to scarlet macaws in Panama, but not in Costa Rica. Although we are aware of little information on the magnitude and extent of deforestation and forest degradation on Panama's Coiba Island, we consider deforestation and forest degradation to be a significant threat to the scarlet maaws in Panama because (1) feral cattle are known to be currently impacting the forest on Coiba Island; (2) conservation concerns, including the elimination of feral cattle, remain poorly addressed on the island; (3) most of the scarlet macaws in the country occur on this island; (4) the number of scarlet macaws in the entire country (fewer than 200) is extremely small and thus more vulnerable to extinction (see *Factor E*); (5) the range of the species in this country is highly restricted, primarily to Coiba Island which is only approximately 494 km^2 (191 mi^2); and (6) scarlet macaws have large home ranges (see *Movements*) and thus require large areas to survive. In Costa Rica, the species numbers between approximately 800 and 2,000 in ACOSA, and approximately 450 in ACOPAC. We are not aware of any information indicating that habitat loss or destruction is affecting the population in ACOPAC. Despite the occurrence of activities causing some level of deforestation in ACOSA, the best available information suggests scarlet macaws in ACOSA may be increasing in numbers (see *Distribution and Abundance*). For these reasons, we do not consider deforestation or forest degradation to be occurring at a level that is likely to have a negative impact on the species in Costa Rica, either now or in the foreseeable future.

South America

As indicated above, we focus here on the Amazon region and request information from the public on the status of the species in areas of Columbia and Venezuela (see Information Requested) that lie outside the Amazon Biome.

The Amazon is the world's greatest expanse of tropical forest, originally covering 6.2 million km^2 (2.4 million mi^2) (Hansen *et al.* 2010, p. 2; Foley *et al.* 2007, p. 25; Killeen 2007, p. 11; Soares-Filho *et al.* 2006, p. 522; Myers and Myers 1992, in Bird *et al.* 2011, p. 1). Although it has the world's highest absolute rate of deforestation (FAO 2010a, pp. 232–233; Hansen *et al.* 2008, entire; Neptstad *et al.* 2008, p. 1350; Laurance *et al.* 2002, p. 738), vast tracts of remote, intact forest still remain (Government of Guyana 2010, p. 6; Hansen et al. 2010, p. 2; Jarvis *et al.* 2010, p. 185; Vergara and Scholz 2010, p. 3; Love *et al.* 2007, p. 63; Barreto *et al.* 2006, pp. 45–53; Soares-Filho *et al.* 2006, pp. 521–522). As of 2003, forest cover of the region was an estimated 5.3 million km^2 (2.0 million mi^2) (Soares-Filho *et al.* 2006, p. 522). To date, approximately 18 percent of the region's forest has been cleared with average annual losses of approximately 18,000 km^2 (6,950 mi^2) per year (Instituto Nacional de Pesquisas Espaciais 2011, in Bird *et al.* 2011, p. 1). A roughly equal amount is estimated to be degraded by selective logging (Foley *et al.* 2007, p. 27; Asner *et al.* 2005, entire). Deforestation and forest degradation in the Amazon are largely the result of the expansion of agriculture, cattle ranching, and logging. Other factors also contribute, especially the construction of roads that provide access to previously remote areas and allow further expansion of agriculture, ranching, mining, and other activities that result in more forest clearing and degradation (Davidson *et al.* 2012, p. 323; Lambin and Meyfroidt 2011, pp. 3468–3469; May *et al.* 2011, pp. 6, 9–11; Barona *et al.* 2010, entire; Foley 2007, pp. 26–27; Barreto *et al.* 2006, pp. 25–26; Morton *et al.* 2006, entire; Soares-Filho *et al.* 2006, p. 520; Asner *et al.* 2005, entire; Fearnside 2005, pp. 681–683; Laurance *et al.* 2004, entire). Eighty percent (Malhi *et al.* 2008, p. 169) of the deforestation in the Amazon occurs in Brazil, the country in which the majority of the Amazon lies (Blaser *et al.* 2011, p. 274). During 2005–2009, Brazil lost approximately 10,700 km^2 (4,131 mi^2) of Amazon forest per year (Blaser *et al.* 2011, p. 275). Deforestation in the Amazon occurs primarily along the south and east edge of the Amazon Basin in the Brazilian states of Rondonia, Para, Mato Grosso, and Acre, an area referred to as the "arc of deforestation" (Hansen *et al.* 2008, p. 9440; Malhi *et al.* 2008, p. 169; Soares-Filho *et al.* 2006, pp. 521–522; Asner *et al.* 2005, entire), and in the northern state of Roraima (Instituto Nacional de Pesquisas Espaciais (INPE) 2005, in Asner *et al.* 2005, p. 480). The remaining 20 percent of deforestation in the Amazon occurs in the remaining seven countries and one territory that comprise the region. Recent average deforestation rates for these countries and territory, which in some cases includes forest loss in areas outside the Amazon and outside the range of the scarlet macaw, vary from nearly 0 (Guyana, Suriname, French Guiana) to approximately 3,080 km^2 (1,189 mi^2) (Bolivia) per year (FAO 2010a, p. 233).

Deforestation in the Amazon is ongoing and expected to continue into the future. Soares-Filho *et al.* (2006, p. 522) estimate loss of Amazon closed canopy forest via modeling of different potential future scenarios. The most pessimistic "business as usual" scenario investigated by Soares-Filho *et al.* assumes that recent deforestation trends will continue, highways scheduled for paving will be paved, compliance with environmental legislation will remain low, new protected areas will not be created, and up to 40 percent of the forests inside and 85 percent of the forests outside of protected areas will be deforested (Soares-Filho *et al.* 2006, p. 520). Results indicate that Amazon closed canopy forest will be reduced under this scenario from its current 5.3 million km^2 (2.0 million mi^2) to an estimated 3.2 million km^2 (1.2 million mi^2) (53 percent of its original area), and that future deforestation will continue to be concentrated primarily in the eastern and southern Brazilian Amazon. Large blocks of remote forest outside Brazil and in most of the northwest Brazilian Amazon are projected to remain largely intact until 2050 (Soares-Filho *et al.* 2006, p. 522). Soares-Filho *et al.* consider their results to be conservative because they did not consider forest degradation due to logging and fire, the potential effects of global warming, or the loss of savannas. However, others suggest projected losses under Soares-Filho et al.'s "business as usual" conditions may be too high because rates of deforestation in the Amazon have declined during recent years (Bird *et al.* 2011, p. 6), and Soares-Filho *et al.* modeled future scenarios

using 1997–2002 deforestation rates that don't take into account recent trends (Soares-Filho *et al.* 2006b, pp. 4–6)). While deforestation in the Brazilian Amazon during 1996–2005 averaged approximately 19,500 km² (7,529 mi²) per year, it averaged only about 7,000–10,000 km² (2,702–3,861 mi²) per year during 2005–2009 due to several factors, likely including extensive conservation efforts by the Brazilian government (Blaser *et al.* 2011, p. 275; May 2011, pp. 16–18; Nepstad *et al.* 2009, p. 1350). Nepstad *et al.* (2008, entire) combined Soares-Filho *et al.*'s pessimistic scenario with the future effects of drought and logging. They project 31 percent of the Amazon's closed canopy forest would be deforested and 24 percent would be degraded by 2030. Nepstad *et al.*'s (2008, p. 1741) results also show large tracts of Amazon forest remaining outside Brazil and in northwest Brazil.

Using the results of Soares-Filho *et al.*'s most pessimistic and optimistic scenarios, BirdLife International (BLI) (2011c, unpaginated) projects the scarlet macaw will lose 21.4 to 35 percent of its Amazon habitat within three generations (38 years). Although this constitutes a loss of up to more than a third of the species' habitat in the region, evidence suggests that scarlet macaws occur and are generally common throughout the Amazon (see *Distribution and Abundance*) and that large areas of intact forest will remain in the region into the future, even under pessimistic conditions. Further, due to the species level of tolerance of fragmented or degraded habitats, projected losses of forest habitat are expected to result in less than a 25 percent decline in the scarlet macaw population (BLI 2011c, unpaginated). Therefore, we do not consider deforestation or forest degradation to be a threat to the species in the Amazon now or in the foreseeable future.

Summary of Factor A

Deforestation and forest degradation are a threat to the scarlet macaw in some areas of its current range. Deforestation is a significant threat throughout the range of the subspecies *A. m. cyanoptera* (Mexico south to Nicaragua), where most of the species' historical habitat has been eliminated, the remaining habitat is fragmented, and habitat occurs mainly in the few large isolated tracts of forest remaining in the region. Deforestation rates in the region are the highest in Latin America, and are often associated with illegal activities that, due to weak governance in the region, are difficult to control. Evidence indicates that deforestation and forest degradation is ongoing throughout the range of *A. m. cyanoptera*, and we are unaware of information indicating these activities have been abated. As such, because scarlet macaws require large areas of habitat to meet their biological requirements, the subspecies' range is limited and fragmented, and deforestation is rapid and ongoing in these countries and occurs within the range of the few remaining scarlet macaw populations in the region, we conclude that habitat destruction or modification occurs at a level that is having a negative impact on the subspecies *A. m. cyanoptera* throughout its range. In Costa Rica, previous levels of deforestation eliminated much of the forest in Costa Rica, including approximately 80 percent of scarlet macaw habitat. However, current practices in Costa Rica have resulted in a reversal in this trend; forest cover in the country has increased substantially over the past 10 to 15 years and continues to increase. Although some level of deforestation is occurring in the ACOSA, scarlet macaw numbers appear to be increasing in this region, suggesting that habitat loss or modification is not posing a significant threat to the species in this country. In Panama, where one extremely small population of the species occurs, and in a severely restricted range, mainly on Coiba Island, the threat to habitat posed by feral cattle and other factors likely pose a significant immediate threat to the scarlet macaws in this country.

Despite threats to scarlet macaws in Mesoamerica, in the Amazon, where the vast majority of the species' current range occurs, most of the species' forest habitat remains intact and remote from human impacts. Although extensive deforestation and forest degradation occur in the Amazon, primarily on its south and east margins, even under pessimistic circumstances, approximately half (53 percent, or over 2 million km² (0.8 million mi²)) of the Amazon forest, including large blocks of remote intact forest habitat, are projected to remain until at least 2050. Although a decline in forest cover under this scenario is likely to cause a decline in scarlet macaw numbers, the level of the decline is unlikely to place the species in danger of extinction in the foreseeable future because large areas of the species' habitat will remain.

Although the scarlet macaw is threatened by deforestation in most of Mesoamerica, this area comprises less than 17 percent of the species' range. Because the species is considered common throughout the Amazon, which comprises most (about 83 percent) of the species' current range, and large tracts of intact Amazon forest are projected to remain in this region even under pessimistic deforestation conditions, we do not consider habitat destruction and modification to be a threat to the species throughout its entire range now or in the foreseeable future. In conclusion, although the scarlet macaw is threatened by habitat destruction or modification in some regions of its range, we do not consider habitat destruction and modification to be a threat, either now or in the foreseeable future, to the species throughout its range. However, we consider habitat destruction and modification to be an immediate threat to the subspecies *A. m. cyanoptera* throughout its range (Mexico, Guatemala, Belize, Honduras, and Nicaragua), and to the subspecies *A. m. macao* in Panama.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Parrots and macaws have been used for centuries in the neotropics, as pets, as a source of ornamental feathers, and for food (Cantu-Guzman *et al.* 2007, p. 9; Guedes 2004, p. 279; Snyder *et al.* 2000, pp. 98–99). The threat of overutilization of most species is primarily attributed to capture for the pet trade (Wright *et al.* 2001, p. 711; Snyder *et al.* 2000, p. 150). Parrots have been traded for centuries in the neotropics (Cantu-Guzman *et al.* 2007, p. 9; Guedes 2004, p. 279; Snyder *et al.* 2000, pp. 98–99) and in the past several decades, capture for the pet trade and habitat loss have become the main threats to many parrot species (Guedes 2004, p. 279; Wright *et al.* 2001, p. 711).

As with other parrots, the scarlet macaw is a long-lived species with a low reproductive rate (Lee 2010, p. 3; Thiollay 2005, p. 1121; Wright *et al.* 2001, p. 711). As a result, the species is slow to recover from harvesting pressures, and these pressures can have a particularly devastating effect on the species (Lee 2010, p. 3; Thiollay 2005, p. 1121; Wright *et al.* 2001, p. 711; Munn *et al.* 1989, p. 410); removal of individuals year after year can stop population growth and cause local extirpations (Cantu-Guzman *et al.* 2007, p. 14). Both poaching of chicks from nests and trapping adults are used for capturing scarlet macaws (Arevalo 2011, unpaginated; Dear *et al.* 2010, p. 19; Bjork 2008, p. 15; Garcia *et al.* 2008, p. 51; Hanks 2005, pp. 88–89; Herrera 2004, p. 6; Portillo Reyes *et al.* 2004, in McReynolds 2011, *in litt.*; Gonzalez 2003, pp. 441–443; Vaughan *et al.* 2003, pp. 5, 8; Duplaix 2001, p. 7; Marineros and Vaughan 1995, p. 460). Where nestlings are targeted, there is a lag in

population decline due to the long lifespan of adults (Wright 2001, p. 717). Thus, declines may not be apparent for decades. Where adults are targeted, the population is depleted more rapidly because reproductive individuals are removed from the population (Collar *et al.* 1992, p. 6). The number of individuals actually sold or exported for the pet trade only represents a portion of those removed from the population due to mortality associated with capture and transport, which is estimated to be as high as 77 percent (Cantu-Guzman *et al.* 2007, p. 60). Certain capture methods may also contribute to population declines by destroying the already limited number of trees that have suitable nest cavities (Munn 1992, pp. 55–56), thus limiting the number of pairs that can breed in an area.

The scarlet macaw is a popular pet species within its range countries (Snyder *et al.* 2000, p. 150; Wiedenfeld 1994, p. 102), and capture for sale in local markets can provide a significant source of supplemental income in rural areas (Huson 2010, p. 58; Gonzalez 2003, p. 438). Once a species becomes rare in the wild, demand often increases, creating a greater demand for the species and increasing harvesting pressure (Herrera and Hennessey 2009, p. 234; Wright *et al.*. 2001, p. 717). Species priced above $500 U.S. dollars (USD) are more likely to be imported into a country illegally, and higher prices often drive poaching rates (Wright *et al.*2001, p. 718). The scarlet macaw is a larger and more expensive species; prices in the United States may reach over $2,000 USD (Cantu-Guzman *et al.* 2007, p. 73).

Legal International Trade

The United States and Europe were historically the main markets for wild birds in international trade (FAO 2011b, p. 3). Trade in parrots was particularly high in the 1980's due to a huge demand from developed countries (Rosales *et al.*. 2007, pp. 85, 94; Best *et al.*. 1995, p. 234). In the years following the enactment of the U.S. Wild Bird Conservation Act in 1992 (WBCA; 16 U.S.C. 4901 et seq.), studies found lower poaching levels than in prior years, suggesting that import bans in developed countries reduced poaching levels in exporting countries (Wright *et al.* 2001, pp. 715, 718). The European Union, which was the largest market for wild birds following enactment of the WBCA, banned the import of wild birds in 2006 (FAO 2011b, p. 21), thus eliminating another market for wild birds in international trade.

International trade of the scarlet macaw was initially restricted by the listing of the species in Appendix II of CITES in 1981, and, in 1985, it was transferred to the more restrictive Appendix I. CITES, an international agreement between governments, ensures that the international trade of CITES-listed plant and animal species does not threaten those species' survival in the wild. There are currently 175 CITES Parties (member countries or signatories to the Convention). Under this treaty, CITES Parties regulate the import, export, and re-export of specimens, parts, and products of CITES-listed plant and animal species (see *Factor D* discussion). Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Scientific and Management Authorities of each CITES Party (CITES 2010, unpaginated). In 1981, the scarlet macaw was listed in Appendix II of CITES, which includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival (UNEP–WCMC 2012, unpaginated; CITES 2010, unpaginated). In 1985, the species was transferred from Appendix II to Appendix I. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species in the wild and would not be for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species in the wild, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

On the same date that the scarlet macaw was placed in Appendix I, Austria, Switzerland, Liechtenstein, and Suriname entered a reservation stating that they would not be bound by the provisions of CITES relating to international trade in scarlet macaws (Austria withdrew its reservation in 1989) (UNEP–WCMC 2012, unpaginated). A reservation means that these countries are treated as non-CITES parties with respect to the species concerned. However, if a country with a reservation on a particular species wishes to trade in that species with a country that has not taken the same reservation, then that trade is subject to the CITES permit requirements.

Based on CITES trade data obtained from the United Nations Environment Programme–World Conservation Monitoring Center CITES Trade Database, from the time the scarlet macaw was transferred to CITES Appendix I in 1985 through 2010, 14,210 specimens of scarlet macaw were reported in international trade. Of these, 5,981 were live birds, 6,171 were feathers, and the remainder were such items as eggs, dead bodies, derivatives, and scientific specimens. In analyzing these data, it appears that a number of records in the database may be over-counts due to slight differences in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of scarlet macaw specimens in international trade during this period was 13,075, of which 5,175 were live birds, and 5,850 were feathers. Because the scarlet macaw is listed in Appendix I of CITES, legal commercial international trade, especially trade in specimens obtained from the wild, is limited. Of the 13,075 specimens that were likely in trade between 1985 and 2010, the majority (7,890, or 60 percent) were either captive-born or captive-bred, pre-convention specimens, from unknown sources, or were confiscated or seized due to lack of certification or authorization to import. The remaining 5,185 (40 percent) were wild specimens (including 2,454 feathers, 1,716 live birds, 940 scientific specimens, 3 bodies, 1 derivative, and 71 unspecified). Of these wild specimens, only 834 (16 percent) were traded for commercial purposes. All 834 were live birds, of which 831 (99.6 percent) were exported from Suriname (the other three were exported from Honduras). The remaining 4,351 wild specimens were traded for educational, captive propagation, scientific, personal, or similar purposes. Regardless of purpose, most (1,629, or 95 percent) of the total of 1,716 live, wild-sourced scarlet macaws that were in trade during 1985 to 2010 were exported from Suriname.

Suriname is the only scarlet macaw range country that filed a reservation on the transfer of the species from CITES Appendix II to the more restrictive Appendix I. Suriname is one of only two countries in South America that still legally export significant quantities of wildlife (Duplaix 2001, p. ii). Wildlife exports generate significant income and jobs in Suriname, and the country has set an annual voluntary export quota of from 100 to 133 scarlet macaws for the past several years (UNEP–WCMC 2012, unpaginated). Suriname's wildlife

export quotas are reported to be "realistic" in that they are based on the belief that larger parrots cannot sustain large harvests (Duplaix 2001, pp. 10, 65, 68). Further, actual exports of CITES listed species are often lower than Suriname's allowed quotas (FAO 2010b, p. 42; Duplaix 2001, p. 10).

Because most specimens of scarlet macaw reported in trade were from non-wild sources, were seized, or were feathers rather than whole birds, and because most wild-sourced, live birds were exported from Suriname, which is reported to set realistic quotas, we have determined that legal international trade controlled via valid CITES permits is not a threat to the species.

Despite regulation of international scarlet macaw trade through CITES, there is still some level of illegal international trade in wild scarlet macaws (Snyder *et al.* 2000, p. 150; Duplaix 2001, p. 8), although most harvested birds probably remain within the species' range countries (Snyder *et al.* 2000, p. 150).

Illegal Trade in Mesoamerica

The scarlet macaw is particularly threatened by capture for the pet trade in Mesoamerica, where the species' populations are isolated and small. The scarlet macaw is protected by domestic laws within all countries in Mesoamerica (Nicaragua Ministerio del Ambiente y Los Recursos Naturales 2010, pp. 3708–3709; Traffic North America (Traffic NA) 2009, pp. 40, 44–46; Animal Legal and Historical Center 2008, unpaginated; Keller and Schmitt 2008, abstract; Pereira 2007, p. 34; Parker *et al.* 2004, Annex H, unpaginated; CITES 2001, p. 7; Government of Belize 2000, entire; Renton 2000, p. 255). However, the agencies responsible for enforcing wildlife laws in these countries generally do not have the resources or funding to adequately enforce these laws (Traffic NA 2009, p. 20; Valdez *et al.* 2006, p. 276; Mauri 2002, entire). The general public perception in the region is that the probability of being punished for breaking wildlife-related laws is low, and that, even if caught, sanctions dictated by law are usually not applied. Further, low salaries and high unemployment in the region drives people to search for additional sources of income (Traffic NA 2009, pp. 23–24). As a result, scarlet macaws are still captured throughout the region and traded illegally (see the following subsections).

Mexico, Guatemala, and Belize

Poaching occurs at significant levels in the Maya Forest region of Mexico, Guatemala, and Belize, where the three subpopulations total approximately 400 scarlet macaws. Although information on the extent of poaching in Mexico is unavailable, according to Boyd and McNab (2008, p. xiii), reproductive success is almost certainly lower in Mexico than in Guatemala, where many nests are protected. Cantu-Guzman *et al.* (2007, p. 35) indicate that up to 50 scarlet macaws are captured annually in Mexico, although some of these may be from Central American countries. Further, detained traffickers report that parrot populations in Chiapas (the primary state in which the species occurs in Mexico) have decreased so much that trapping is now conducted in natural protected areas in Chiapas (Cantu-Guzman *et al.* 2007, p. 14). In Guatemala, much of the scarlet macaw population is currently protected through conservation efforts. However, up to 25 percent is not protected, and it is likely that most unprotected nests in the country are poached (Garcia *et al.* 2008, p. 51; Boyd and McNab 2008, pp. v–vi). In Belize, Arevalo (2011, unpaginated) reports that 50 percent, 47.4 percent, and 89 percent of monitored nests were poached in 2008, 2010, and 2011, respectively. Modeling research indicates that poaching is one of the most important factors influencing scarlet macaw population growth in the Maya Forest and that relatively low levels of poaching could result in population declines (Clum 2008, pp. 76, 78–80).

Honduras and Nicaragua

Little quantitative information on poaching of scarlet macaws in Nicaragua and Honduras is available, although poaching of the species is recognized as a problem in these countries (Traffic NA 2009, p. 5). Capture of parrots for the pet trade is described as common in Nicaragua (Herrera 2004, p. 1), and up to four times as many parrots are captured than make it to market due to mortalities during capture and transport (Engebretson 2006, in Weston and Mamon 2009, p. 79). Evidence indicates that parrot populations in Nicaragua have declined by as much as 60 percent since the mid-1990s, although loss of habitat has also likely contributed to this decline (Nicaragua Ministerio del Ambiente y Los Recursos Naturales (MARENA) 2008, p. 51). Scarlet macaws are one of the three most preferred species in Nicaragua's parrot trade and are among the main CITES species harvested for illegal trade in the country (McGinley *et al.* 2009, p. 16; Lezama 2008, abstract; MARENA 2008, p. 25). In Honduras, the scarlet macaw population appears to have decreased since 2005, and, according to Lafeber Conservation & Wildlife (2011, unpaginated), the scarlet macaw is experiencing severe reproductive limits due to poaching. In a 2010–2011 survey of 20 parrot nests, 16 of which were scarlet macaw nests, 17 showed evidence of past or recent poaching (Lafeber Conservation & Wildlife 2011, unpaginated). In 2003, an estimated 200 to 300 chicks were poached in the Rus Rus area alone (Portillo Reyes *et al.* 2004, in McReynolds 2011, *in litt.*). Although quantitative information on the impacts of poaching on scarlet macaws is not available for these countries, the available evidence suggests poaching is occurring at significant levels.

Costa Rica

Scarlet macaws in Costa Rica have experienced heavy poaching pressure in the recent past. In field studies conducted in the 1990s, 56 to 64 percent of evaluated nest sites in the Carara National Park region showed signs of being poached (Vaughan *et al.* 2003, pp. 6, 8; Snyder *et al.* 2000, p. 150; Marineros and Vaughan 1995, p. 460). Vaughan *et al.* (2005, pp. 127) suggest intense anti-poaching efforts in this region during 1995–1996 may have resulted in increased recruitment into the population. The authors also suggest the scarlet macaw population was self-sustaining from 1996–2003, despite heavy poaching pressure. However, poaching pressure appears to be increasing in this region. Officials in Carara National Park indicate that poaching of wildlife is becoming more prominent and is believed to be occurring at unsustainable levels (Huson 2010, p. 19). Park officials believe lack of funding and capacity prevents them from effectively controlling poaching in the park. From 2004 to 2009, there were only 26 seizures of poached animals, totaling 31 animals. Although most (39 percent) of these were paca *(Cuniculus paca),* poached animals also included scarlet macaw chicks (Huson 2010, p. 19), and scarlet macaws were among the top four species identified by park officials as most at risk of poaching or local extinction or both (Huson 2010, p. 20). Based on surveys of local residents, Huson (2010, entire) estimated the number of individuals poached of six species (three birds and three mammals). While a relatively small portion of the estimated number of individuals hunted or extracted from the park were scarlet macaws, approximately 19 scarlet macaw chicks were estimated to be removed from the park per month, although the author

indicated that, due to limitations of the study, this estimate is likely exaggerated (Huson 2010, p. 59).

Human population densities and accessibility in ACOSA are lower than in ACOPAC, and estimates of the scarlet macaw population in ACOSA range from 800–1,200 to 2,000 individuals. During 2005, Dear *et al.* (2010, entire) interviewed 105 non-randomly selected residents (with knowledge of wildlife or long-term residency) at 35 sites in ACOSA about scarlet macaws in their area. Interview responses suggest the level of poaching has decreased in the region. However, poaching still occurs and still threatens the population (Dear *et al.* 2010, p. 19). Interview responses suggest that 25–50 scarlet macaw chicks are poached annually (Dear *et al.* 2010, p. 19). Additionally, Guittar *et al.* (2009, pp. 390, 392) report that of 57 potential nest cavities found in ACOSA in 2006, 11 (19 percent) were reported by local residents as recently poached, although the authors suggest the actual number of nests poached is likely greater.

Although 85 percent of ACOSA residents interviewed by Dear *et al.* (2010, p. 10) believed scarlet macaws were more abundant in 2005 than in 2000, and scarlet macaws were not determined to be at risk of extinction during a 2006 review of parrot populations in Costa Rica (see *Distribution and Abundance*), interviews of residents by Guittar *et al.* (2009, p. 390) suggest a significant proportion (19 percent) of nests in ACOSA are poached. Further, recent information suggests poaching of wildlife is on the rise and has reached unsustainable levels in ACOPAC. Because (1) scarlet macaws are susceptible to overharvest due to their demographic traits and naturally low rate of reproduction, (2) the populations in Costa Rica are additionally at risk because they are relatively small and are isolated, (3) poaching at one of the only two viable populations in the country is on the rise and park officials believe they do not have the resources to control it, and (4) a significant proportion of nests in the other of the two viable populations are reported to be poached, it is reasonable to conclude that poaching is having a significant impact on the species in Costa Rica. Thus, we consider poaching to be a significant threat to the species in Costa Rica.

Panama

Little information is available on capture of scarlet macaws for trade in Panama. Coiba and Cerro Hoya National Parks are located within Panama's most impoverished province (Government of Panama 2005, p. 36). According to Parker *et al.* (2004, p. II–6), trade in rare and endangered species is a constant threat in the country, due to the high prices paid for these animals and their parts. Although poaching is not identified as a main threat to biodiversity within Coiba and Cerro Hoya National Parks (Parker *et al.* 2004, Annex G, unpaginated), capture for the illegal pet trade is identified as being a threat to the species in this country (Keller and Schmitt 2008, abstract). For these reasons, it is reasonable to conclude that some level of poaching of scarlet macaws likely occurs in the country, although at what level is unknown. However, because the current population of scarlet macaws in Panama is extremely small (fewer than 200 individuals) and isolated, and the species' demographic traits and low rate of reproduction render them susceptible to overharvesting, even low levels of poaching would likely have a negative effect on the population in Panama. Thus, we consider poaching to be a significant threat to the species in Panama.

Illegal Trade in South America

There is evidence of a market for national and international parrot trade within the range of the scarlet macaw in South America, much of which involves illegally traded birds (Gastañaga *et al.* 2011, entire; Lee 2010, p. 12; Herrera and Hennessey 2007, pp. 296–297). However, there is little evidence that scarlet macaws are a significant part of that trade. Gonzalez (2003, entire) reported results of a parrot-harvesting study in northeast Peru during 1996–1999, which suggested that the illegal harvest of scarlet macaws was not sustainable and posed a long-term threat to the species. However, according to Brightsmith (2009, *in litt.*), recent studies indicate that scarlet macaws are not particularly common in Peru's national pet trade. Only 38 scarlet macaws were seen during over 500 visits to Peru markets during 2007–2009 (Brightsmith 2009, *in litt.*). A study conducted in wildlife markets in eight of Peru's capital cities detected only four scarlet macaws during quarterly surveys conducted over a 1-year period during 2007 to 2008 (Gastanaga *et al.* 2011, entire). In Bolivia, a study conducted in Santa Cruz, a city that receives much of the trade from Bolivia's lowland savannas and rainforest, recorded 7,279 individual parrots at a market during a 1-year period, 306 of which were macaws (Herrera and Hennessy 2007, p. 297). However, only 4 of these were scarlet macaws. A later report by the same authors (2009, p. 233) recorded only 50 scarlet macaws during a 4-year period in the same market. In Guyana, Hanks (2005, p. 27, 84) reports that trappers on the Courantyne River system in Guyana sell about 200 scarlet macaws every trapping season, despite the country's zero quota for the species. However, Hanks also indicates the species is fairly common in Guyana. Hanks (2005, p. 8) also reports anecdotal information that indicates captured scarlet macaws are smuggled between Guyana and Suriname.

Scarlet macaws are generally considered common and widespread within the Amazon. Although there is evidence that some level of illegal trade of scarlet macaws occurs within the Amazon, and that harvesting of the species was heavy at one time in northeast Peru, evidence suggests the current level of trade is low. Although the study by Gonzalez (2003, entire) suggests a high level of harvest of the species in northeast Peru, a more recent and national scale study suggests a low level of scarlet macaw trade in the country. Based on what little information exists on non-CITES regulated trade in South America, it appears that this trade does not occur at a level that would put the species in danger of extinction in this region now or in the foreseeable future.

Hunting

Scarlet macaws are known to be hunted in some areas of their range for meat or feathers (Maldonado 2010, p. 60; Salas and Meerman 2008, p. 42; Heemskerk and Delvoye 2007, p. 300; Thiollay 2005, entire; Burger and Gothfeld 2003, p. 23; CITES 2001, p. 7; Duplaix 2001, pp. 7, 64; Ridgely and Gwynne 1989, p. 173; Munn 1992, pp. 56–57; Saffirio and Skaglion, 1982, p. 321). However, information on the effects of hunting on scarlet macaw populations is limited. Maldonado (2010, entire) reported that parrot species comprised only 40 (1.9 percent) of a total of 2,101 game species harvested by subsistence hunters during a 4-year period over approximately 400 km^2 (154 mi^2) of the Columbian Amazon. Only one scarlet macaw was reported harvested during the study, although harvested animals also included 31 unidentified macaws in the genus *Ara*. Thiollay (2005, p. 1129) reported that encounter rates and mean flock size of *Ara* macaws in French Guiana were significantly higher in non-hunted than regularly hunted sites. Hunted sites were easily accessible and disturbed to some degree, whereas non-hunted sites were pristine, undisturbed forest. Although the study indicates that

current levels of macaw hunting in French Guiana may be unsustainable in regularly hunted areas, the portion of forest regularly hunted in this country is likely extremely low. Ninety-five percent of French Guiana forest is undisturbed primary forest (FAO 2010a, p. 14, 54). Further, French Guiana has a very low human population density (Van Andel *et al.* 2003, p. 66; Hanks 2005, p. 16; United Nations Department of Economic and Social Affairs 2010, entire), has the highest proportion (98 percent) of its area in forest than any other country or territory in the world (FAO 2010a, p. 14), and much of its forest is not easily accessible (Comptes économiques rapides pour l'Outre-mer (CEROM) 2008, pp. 4, 7–8). Thus, much of French Guiana's forest is unlikely to be as regularly hunted as the hunted sites reported by Thiollay. A study conducted in southeast Peru indicates that the number of large macaws is significantly lower in areas subject to moderate to intense hunting, and that even moderate levels of hunting appeared to be sufficient to extirpate large macaws from large regions of the Amazon (Munn 1992, pp. 56–57). However, the levels at which the scarlet macaw is hunted across the Amazon are unknown. Thus, it is difficult to determine whether hunting poses a threat to the species in this region. We are unaware of any information on current levels of hunting in Mesoamerica. Illegal xaté (palms of the genus *Chamaedorea*) collectors are known to kill scarlet macaws for food in the Chiquibul Forest of Belize (Salas and Meerman 2008, p. 42), but the extent of this activity is unknown. In Guatemala's Maya Biosphere Reserve forest concessions, Radachowsky *et al.* (in press, p. 7) found that densities of large terrestrial birds were three times lower in areas of high human access than in areas with difficult access. Although this may suggest hunting has an impact on scarlet macaw populations, in the case of parrot species like the scarlet macaw, these declines may also be the result of poaching for the pet trade.

Although hunting may pose a threat to scarlet macaws in some areas, we are not aware of any information indicating that hunting occurs at a level that places the species in danger of extinction throughout all or any part of its range. We are also not aware of any information indicating that hunting may place the species in danger of extinction within the foreseeable future throughout all or any portion of its range.

Recreational, Scientific, or Educational Purposes

We are not aware of any information indicating that overutilization for recreational, scientific, or educational purposes is a threat to the species anywhere in the species' current range.

Summary of Factor B

Overutilization of scarlet macaws, primarily as a result of poaching for the pet trade, is a threat to the scarlet macaw in some areas of its current range. Capture for the pet trade is a significant and immediate threat to the species throughout the range of the subspecies *A. m. cyanoptera* (Mexico, Guatemala, Belize, Honduras, and Nicaragua), where the species occurs mainly in small, isolated populations. Evidence suggests poaching occurs at significant levels in the Maya Forest region, where modeling indicates that even moderate levels of poaching could cause a decline in already small populations. Although quantitative data from Honduras and Nicaragua are lacking, evidence suggests poaching occurs at significant levels in this region as well. Within the range of the subspecies *A. m. macao* in Costa Rica, evidence indicates poaching of wildlife in one of the two viable populations in the country has increased to unsustainable levels, and increased access to, and thus likely poaching of, the second population will likely increase in the foreseeable future as the result of an expanding transportation network in the region. Although information is limited in Panama, it is reasonable to conclude that some level of poaching occurs because trade in rare and endangered species is a constant threat in the country due to the high prices paid for these animals and their parts, and poaching has been identified specifically as a threat to scarlet macaws in this country. Further, because the population is isolated and extremely small, it is also reasonable to conclude that any level of poaching on this population poses a significant threat to the species. We are not aware of any information indicating that poaching levels in any of these countries will decrease at any time in the foreseeable future.

Despite the threat of overutilization of scarlet macaws in Mesoamerica, the available information suggests that overutilization is not a threat in the Amazon of South America, where the vast majority of the species' current range and worldwide population occurs. Scarlet macaws are generally considered common in the Amazon, and the Amazon comprises approximately 83 percent of the species' global range. Therefore, although we consider overutilization to be occurring at significant levels throughout Mesoamerica, we conclude that overutilization due to commercial, recreational, scientific, or educational purposes is not occurring at a level that poses a significant threat to the species throughout its range now or in the foreseeable future.

Factor C. Disease or Predation

Disease

Infectious diseases can pose many direct threats to individual birds as well as entire flocks (Abramson *et al.* 1995, p. 287), and parrots are susceptible to a variety of lethal, infectious diseases, including, among others, Pacheco's disease (psittacine herpesvirus), proventricular dilatation disease, beak and feather disease, and Newcastle's disease (Kistler *et al.* 2008, p. 1; Rahaus *et al.* 2008, p. 53; Tomaszewski *et al.* 2006, p. 536; Brightsmith *et al.* 2005, p. 465; Abramson *et al.* 1995, pp. 288, 293, 296; Gaskin 1989, entire; Panigrahy and Grumbles 1984, p. 811). However, most of the available research on disease in parrots addresses captive-held birds, while information on the health of parrots in the wild is scarce (Karesh *et al.* 1997, p. 368). Burton and Brightsmith (2010, entire) tested parrots, including wild and hand-reared scarlet macaws, at a site in Peru for the presence of *Salmonella* and found no evidence of the disease in these birds, although over 30 percent of domestic fowl at the site tested positive. Karesh *et al.* (1997, entire) tested scarlet macaws, and other macaws, for several diseases at a different site in Peru and detected the presence of two diseases, *Salmonella* spp. and psittacine herpesvirus, in some birds. However, Karesh *et al.* did not identify which species or strain of *Salmonella* was infecting the macaws they tested, and the effects of infection by salmonella are highly dependent on several factors, including the virulence of the strain and the susceptibility of the host species (Friend 1999, p. 103). Further, the effects of psittacine herpesvirus can vary, and the prevalence or clinical significance of the disease in free-ranging species is unknown (Karesh *et al.* 1997, pp. 374–376). Nycander *et al.* (1995, p. 433) detected three types of ectoparasites (botflys, mites, and lice) on macaw (*Ara* sp.) nestlings at a site in Peru. Three out of 63 nestlings appeared to have died from infestations of these organisms. Nycander *et al.* also report the presence of intestinal parasites (*Ascaris galli* and *Heterakis* sp.) and a

blood parasite (*Plasmodium elongatum*), but affected nestlings appeared healthy or showed no signs of clinical symptoms. Although these and other diseases could negatively affect scarlet macaws, we are not aware of any information indicating that disease poses a significant threat to the species as a whole, although it may pose a greater threat to small, isolated populations in parts of the species' range (see *Factor E*).

Predation

Few predators (e.g., hawk eagles) are large enough to capture adult macaws, and predators that are large enough occur at naturally low densities (Brightsmith *et al.* 2005, p. 469). Consequently, it is likely that predation of adults is uncommon, and that most predation occurs on eggs, nestlings, and newly fledged birds. These earlier life stages are reported to be predated mainly by raptors (birds of prey), reptiles, and small to medium-sized mammals. Predators and potential predators include falcons (*Micrastur semitorquatus, Micrastur ruficollis, Falco rufigularis*), toucans (*Ramphastos swainsonii, R. cuvieri, Pteroglossus castanotis*), black iguanas (*Ctenosaura similis*), tayras (*Eira barbara*, a large weasel), monkeys (*Ateles paniscus, Saimiri sciureus, Cebus capucinus*), opossums (*Didelphis marsupialis*), rats (unknown sp.), and cockroaches (unknown sp.) (Renton and Brightsmith 2009, p. 5; Garcia *et al.* 2008, pp. 51–52; Anleu *et al.* 2005, p. 45; Vaughan *et al.* 2003, p. 10; Inigo-Elias 1996, p. 83; Nycander *et al.* 1995, p. 433).

Few studies on the level and effects of predation on scarlet macaw populations have been reported. In Guatemala, where the population is very small, cameras placed in five nests recorded predation of three chicks by collared forest falcons (*Micrastur semitorquatus*) (Garcia *et al.* 2008b, in Garcia *et al.* 2008a, pp. 51–52; WCS 2008, p. 3). Scarlet macaws usually hatch one or two chicks (Garcia *et al.* 2008a, p. 61; Inigo-Elias 1996, pp. 80–81; Nycander 1995, p. 431), thus 30–60 percent of the observed chicks were predated. Species with long generation times and low reproductive rates, such as the scarlet macaw, take longer to recover from population declines, especially when populations are small. They are, therefore, more vulnerable to extinction via increases in mortality rates (Owens and Bennett 2000, p. 12146; Owens and Bennett 1997, abstract). Garcia *et al.* (2008, p. 50) identify predation as one of the four main threats to the species in Guatemala. In southeast Peru, Nycander *et al.* (1995, pp. 431–433) report that predators took substantial numbers of macaw (*Ara* sp.) eggs and young at a site in southeast Peru, but they provide no indication that predation posed a significant threat to any of the three macaw species (including scarlet macaws) studied. Twenty percent of scarlet macaw eggs were predated, and 30 percent of chicks died from predation or parasite infection. Also in southeast Peru, Brightsmith (2010, unpaginated) reports only 1 percent to 8 percent of scarlet macaw nests fail as a result of predation, and also provides no indication that this level of predation poses a threat to the species.

Summary of Factor C

Although scarlet macaws are subject to disease and predation, and predation appears to be a threat to individuals in Guatemala, we found no evidence that disease or predation is occurring at a level that places the species in danger of extinction at this time or is likely to place the species in danger of extinction in the foreseeable future.

Factor D: Inadequacy of Existing Regulatory Mechanisms

Habitat Destruction and Modification

Scarlet macaws occur in and require forest habitat for their survival. National forest policy and the legal framework related to forests constitute the basis for sustainable forest management (FAO 2010a, pp. 150). With the exception of Belize, all scarlet macaw range countries have a national or subnational policy framework on forests and their management. Of those countries with a policy framework, all but Colombia have specific national forest laws in support of these policies, but laws supporting national forest policy in Colombia are incorporated within other laws. All range countries except Belize and Venezuela also have National Forest programs that provide the framework to develop and implement their forest policies, although the status of Panama's program is unknown (for information on regulatory mechanisms pertaining to forest management in scarlet macaw range countries see: Claros *et al.* 2011, entire; Espinosa *et al.* 2011, pp. 21–26; FAO 2011c, p. 78; Government of Colombia 2011, pp. 89–91, 203–211; Guignier 2011, pp. 12–22; Larson and Petkova 2011, entire; May *et al.* 2011, pp. 16–55; Meerman *et al.* 2011, entire; Stern and Kernan 2011, pp. 52–54, 88–90; United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN–REDD) 2011, unpaginated; Belize Ministry of Natural Resources and Development 2010, pp. 54, 57–58; Blaser *et al.* 2010, pp. 263–267, 277–281, 291–293, 300–302, 311–312, 320–323, 334–337, 345–346, 365–367, 376–377, 394–396; CIFOR 2010, p. 45; FAO 2010a, pp. 150–158, 302–303; Government of Belize 2010, pp. 27–34; Sparovek 2010, pp. 6046–6047; Tolisano and Lopez-Selva 2010, pp. 24–28; Bauch *et al.* 2009, entire; McGinley *et al.* 2009, pp. 18–30; Patriota 2009, pp. 612–615; Trevin and Nasi 2009, entire; Byers and Israel 2008, pp. 29–34; Torres-Lezama *et al.* 2008, entire; Hopkins 2007, pp. 398–405; Playfair 2007, entire; Portilla and Eguren 2007, pp. 19–32; World Bank 2007, pp. 10–28, 71–76; Clark 2006, pp. 19–29; Grenand *et al.* 2006, pp. 49, 54–56; Baal 2005, unpaginated; Parker *et al.* 2004, pp. III–1–III–8, Annex H, Annex I; Government of Belize 2003, entire; Bevilacqua *et al.* 2002, pp. 6–9; Mauri 2002, entire; Vreugdenhil *et al.* 2002, pp. 6–10).

As discussed above under Factor A, we do not find habitat destruction or modification to be occurring at a level that poses a significant threat to the species throughout all of its range. Thus, it is reasonable to conclude that the regulating mechanisms addressing this threat are adequate at protecting the species at a global level. Therefore, we conclude that inadequacy of existing regulatory mechanisms for addressing habitat destruction or modification is not a threat to the scarlet macaw throughout all of its range. However, we determined that habitat destruction or modification in the form of deforestation and forest degradation occurs at a level that is likely to negatively impact the species throughout all of the range of the subspecies *A. m. cyanoptera*, and in the range of the subspecies *A. m. macao* in Panama. Because deforestation and forest degradation are ongoing and pose immediate significant threats to scarlet macaws in these regions, it is reasonable to conclude that the regulatory mechanisms addressing this threat in these regions are inadequate. Therefore, we conclude that the inadequacy of existing regulatory mechanisms for addressing habitat destruction or modification are a significant immediate threat to the subspecies *A. m. cyanoptera* throughout all of its range, and the subspecies *A.m. macao* in Panama.

Trade

A variety of laws, regulations, and decrees form the policy framework that governs wildlife conservation and use in scarlet macaw range countries, including national implementing legislation for a variety of multilateral

agreements such as CITES (Traffic NA 2009, pp. 11–13) (for information on regulatory mechanisms pertaining to wildlife use in scarlet macaw range countries see: Ecolex 2012, unpaginated; Clayton 2011, unpaginated; de la Torre *et al.* 2011, entire; Embassy of the Bolivarian Republic of Venezuela in the United States 2011, unpaginated; Gastanaga *et al.* 2011, p. 77; Rincon Rubiano 2011, pp. 112–113; Traffic NA 2009, pp. 40–47; Animal Legal and Historical Center 2008, unpaginated; Byers and Israel 2008, pp. 29–34; Cantu-Guzman *et al.* 2007, pp. 24–33; Ecolex 2007a, unpaginated; Ecolex 2007b, unpaginated; Herrera and Hennessey 2007, pp. 295–296; Portilla and Eguren 2007, pp. 19–32; United Nations Environment Programme 2006, pp. 3–5; Hanks 2005, pp. 71–76; Government of Ecuador 2004, entire; Parker *et al.* 2004, pp. III–1–III–2; Van Andel *et al.* 2003, pp. 25, 49, 66–67, 80–85, 102–105, 122; CITES 2001, pp. 7–8; Duplaix 2001, pp. 3–10, 47–51, 61–63; Government of Belize 2000, entire; Global Legal Information Network 1999, unpaginated; FAO 1996, unpaginated). As discussed above under Factor B, we do not find overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the species throughout all of its range. Thus, it is reasonable to conclude that the regulating mechanisms addressing this threat are adequate at protecting the species at a global level. Therefore, we conclude that inadequacy of existing regulatory mechanisms for addressing the threat of capture for the pet trade is not a threat to the scarlet macaw throughout all of its range. However, we determined that overutilization in the form of capture for the pet trade occurs at a level that is likely to negatively impact the species throughout all of the range of the subspecies *A. m. cyanoptera,* and in the range of the subspecies *A. m. macao* in Costa Rica and Panama. Because capture for the pet trade is ongoing and poses an immediate significant threat to scarlet macaws in these regions, it is reasonable to conclude that the regulatory mechanisms addressing this threat in these regions are inadequate. Therefore, we conclude that the inadequacy of existing regulatory mechanisms for addressing overutilization for commercial, recreational, scientific, or educational purposes is a significant immediate threat to the subspecies *A. m. cyanoptera* throughout all of its range, and the subspecies *A. m. macao* in Costa Rica and Panama.

Summary of Factor D

As discussed under Factors A, B, C, and E, we do not find the potential threats discussed under Factors A, B, C and E to occur at a level that places the species in danger of extinction throughout its range now or in the foreseeable future. Thus, it is reasonable to conclude that the regulating mechanisms addressing these potential threats are adequate at protecting the species at a global level. Therefore, we conclude that inadequacy of existing regulatory mechanisms is not a threat to the scarlet macaw throughout all of its range. However, we found potential threats discussed under Factors A and B to be a threat to the species throughout all of the range of the subspecies *A. m. cyanoptera,* and in the range of the subspecies *A. m. macao* in Costa Rica (Factor B) and Panama (Factors A and B). Because these threats are ongoing and pose immediate threats to scarlet macaws in these regions, it is reasonable to conclude that the regulatory mechanisms addressing these threats in these regions are inadequate. Therefore, we conclude that the inadequacy of existing regulatory mechanisms pose an immediate threat to the continued existence of the subspecies *A. m. cyanoptera* throughout all of its range, and the subspecies *A. m. macao* in Costa Rica and Panama.

Factor E: Other Natural or Manmade Factors Affecting the Species' Continued Existence

Small Population Size and Cumulative Effects of Threats

Small, isolated populations place species at greater risk of local extirpation or extinction due to a variety of factors, including loss of genetic variability, inbreeding depression, demographic stochasticity, environmental stochasticity, and natural catastrophes (Lande 1995, entire; Lehmkuhl and Ruggiero 1991, p. 37; Gilpin and Soule 1986, pp. 25–33; Soule and Simberloff 1986, pp. 28–32; Shaffer 1981, p. 131; Franklin 1980, entire). The isolation of populations and consequent loss of genetic interchange may lead to genetic deterioration, for example, that has negative impacts on the population at different timescales. In the short term, populations may suffer the deleterious consequences of inbreeding; over the long term, the loss of genetic variability diminishes the capacity of the species to evolve by adapting to changes in the environment (e.g., Blomqvist *et al.* 2010, entire; Reed and Frankham 2003, pp. 233–234; Nunney and Campbell 1993, pp. 236–237; Soule and Simberloff 1986, pp. 28–29; Franklin 1980, pp. 140–144). Stochastic events that put small populations at risk of extinction include, but are not limited to, variation in birth and death rates, fluctuations in gender ratio, inbreeding depression, and random environmental disturbances such as fire, wind, and climatic shifts (e.g., Blomqvist *et al.* 2010, entire; Gilpin and Soule 1986, p. 27; Shaffer 1981, p. 131). The negative impacts associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (Factors A, B, and C).

Small, declining populations can be especially vulnerable to environmental disturbances such as habitat loss (O'Grady *et al.* 2004, pp. 513–514). In order for a population to sustain itself, there must be enough reproducing individuals (and habitat to sustain them) to ensure its survival. Conservation biology defines this as the "minimum viable population" (MVP) requirement (Grumbine 1990, pp. 127–128). Some studies (Traill *et al.* 2010, entire; Traill *et al.* 2007, entire; Brook *et al.* 2006, entire; Reed *et al.* 2003, entire) suggest that approximately 1,000 to 7,000 adults are required to ensure long-term survival of a species, although others argue that the general applicability of such estimates is not scientifically supported, and that they are likely to be poor estimates of any specific population (Beissinger *et al.* 2011, entire; Flather *et al.* 2011a, entire; Flather *et al.* 2011b, entire; Garnett and Zander 2011, entire). Although common and widespread in the Amazon, the scarlet macaw occurs in relatively small populations in Mesoamerica (ranging from a few pairs up to fewer than 2,000 individuals, with the total population size that is likely no greater than 4,000). Historically, the scarlet macaw in Mesoamerica existed in much higher numbers in more continuous, connected habitat. Its suitable habitat is becoming increasingly limited, and its suitable habitat is not likely to expand in the future.

The combined effects of habitat fragmentation and other factors on a species can have profound effects and can potentially reduce a species' respective effective population (the proportion of the actual population that contributes to future generations) by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate populations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics

of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). This is especially applicable for scarlet macaws in Mesoamerica, where the species was once wide-ranging and has lost a significant amount of its historical range due to habitat loss and degradation. Furthermore, as a species' or population's status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to other impacts. If this trend continues, its ultimate extinction due to one or more stochastic (random or unpredictable) events becomes more likely. The scarlet macaw's current occupied and suitable range in Mesoamerica is highly reduced and fragmented. The small size of the species' populations in this region, and its reproductive and life-history traits, combined with its highly restricted and severely fragmented range, increases the vulnerability of the scarlet macaw in this region to other threats.

The global scarlet macaw population totals approximately 20,000 to 50,000 individuals. The majority of these birds occur in the Amazon, where the species is generally common and widely distributed. Further, genetic studies indicate there is a high degree of genetic variability throughout the species' range. Consequently, the risks associated with small population size do not pose a threat to the species as a whole. However, most populations in Mesoamerica are believed to range from fewer than 200 to about 700 individuals, with only two possibly numbering between 1,000 and 2,000. Therefore it is reasonable to conclude that the populations in Mesoamerica are threatened by the synergistic interactions of small population size and other threats such as those discussed in Factors A, B, and C above.

Competition for Nest Cavities

Competition for suitable nest cavities has the potential to limit reproductive success by limiting the number of pairs that can breed, or by causing nest mortality as a result of agonistic competitive interactions. Competition among different pairs of scarlet macaws, and between scarlet macaw pairs and pairs of other macaw species, is reported to be intense in some areas (Renton and Brightsmith 2009, p. 5; Inigo-Elias 1996, p. 96; Nycander 1995, p. 428). At a remote study site in southeast Peru, competition for nest sites with other macaws was found to be the primary source of nest failure (Brightsmith 2010, unpaginated). Nevertheless, we are unaware of any information indicating that competition for nest cavities with other macaws occurs at a level that poses a threat to the species. The scarlet macaw is reported to be common in the Amazon, which encompasses the Peruvian portion of the species' range. Further, although a decline in the worldwide population of scarlet macaws is suspected (BLI 2011a, unpaginated), this suspected decline is not believed to be rapid (i.e., greater than 30 percent over 10 years or 3 generations). Further, we are not aware of any information indicating the species is declining in the Amazon (as opposed to in Mesoamerica), except in localized areas around human population centers (see *Distribution and Abundance*).

Feral Africanized honey bees (*Apis mellifera scutellata*) are also reported to compete with scarlet macaws for nest sites (Garcia *et al.* 2008, p. 52; Vaughan *et al.* 2003, p. 13; Inigo-Elias 1996, p. 61). Inigo-Elias (1996, p. 61) reported them to be "a serious problem" during his study of scarlet macaws in Mexico, and Garcia *et al.* (2008, p. 52) consider them the most serious competitor for scarlet macaw nest cavities in Guatemala. Africanized honey bees are an exotic species originally introduced in Brazil in 1956 (Whitfield *et al.* 2006, p. 644). They subsequently spread throughout South and Central America, displacing naturalized European honey bees, and arriving in Mexico, Guatemala, and Belize around 1986 (Whitfield *et al.* 2006, pp. 643–644; Clarke *et al.* 2002 and Rogel *et al.* 1991, in Berry *et al.* 2010, p. 486; Fierro *et al.* 1987, unpaginated). Africanized honeybees occur at higher densities and are more aggressive than naturalized European honey bees (Rogel 1991 and Clarke *et al.* 2002, in Berry *et al.* 2010, p. 486). They attack and drive away intruders in the vicinity of their colonies, preventing the use of cavities in these areas by scarlet macaws. Africanized honeybees also take over occupied scarlet macaw nest cavities, killing the chicks or causing them to starve by driving off the nesting adults, resulting in failure of the macaw nest (Garcia *et al.* 2008, p. 52; Inigo-Elias 1996, p. 61). Inigo-Elias (1996, p. 61) reports that Africanized honey bees caused the failure of 3 of 41 nests during one breeding season. We are unaware of any other data or information on the effects of honeybees on scarlet macaw nesting. Although competition for nest sites with honeybees appears to be a threat to the species in the Maya Forest, we are unaware of any information indicating honeybees are a threat to the species throughout its range.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. Described in general terms, "climate" refers to the mean and variability of different types of weather conditions over a long period of time, which may be reported as decades, centuries, or thousands of years. The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature, precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species, and these may be positive or negative depending on the species and other relevant considerations, such as the effects of interactions with non-climate conditions (e.g., habitat fragmentation). We use our expert judgment to weigh information, including uncertainty, in our consideration of various aspects of climate change that are relevant to the scarlet macaw.

Several studies project various changes in climate in Mesoamerica and the Amazon by the mid- to late century or sooner (Karmalkar *et al.* 2011, entire; Kitoh *et al.* 2011, entire; Giorgi and Bi 2009, entire; Anderson *et al.* 2008, entire; Cook and Vizy 2008, entire; Li *et al.* 2008, entire; Christensen *et al.* 2007, pp. 892–896). Although there are uncertainties in these models, and variation in projections, the general trajectory under most scenarios is one of increased warming in Mesoamerica and the Amazon, and increased drying in Mesoamerica and some areas of the Amazon. Several studies (Imbach *et al.* 2011, abstract; Marengo *et al.* 2011, entire; Asner *et al.* 2010, entire; Vergara and Scholz 2010, entire; Malhi *et al.* 2009, entire; Malhi *et al.* 2008, entire; Nepstad *et al.* 2008, entire) project changes in habitat in areas of the species' range, either from climate change or from climate change in combination with deforestation. However, high levels of uncertainty remain in projecting habitat changes within the species' range (see review by Davidson *et al.* 2012, entire), and there is no consensus on the type or extent of habitat changes that will occur. In addition, the scarlet macaw has a high level of genetic diversity, and is tolerant of a relatively broad range of ecological conditions. The species occurs in a variety of habitat types including wet

forest, dry forest, and savanna; has a broad and flexible diet; can nest in a variety of forest habitats provided they contain suitable nest cavities; and is known to inhabit patchworks of forest and human-modified landscapes and feed on introduced species (see Biological Information). Thus, the scarlet macaw is likely to be able to adapt to some level of change in its environment provided forest remains. Further, we are unaware of any information indicating that the effects of climate change are now causing, or will in the future cause, declines in the scarlet macaw population.

Summary of Factor E

Although small population size combined with the cumulative effect of other threats, and competition for nest cavities, is a threat to the scarlet macaw in some areas of its range, we conclude that small population size, competition for nest cavities, and climate change are not impacting the scarlet macaw at a level that poses a threat to the species throughout its range. Further, we are not aware of any information indicating that any other factors not already discussed under Factors A, B, C, and D pose a threat to the species throughout all of its range.

In Mesoamerica, the scarlet macaw's current range is highly restricted and fragmented, populations are small and isolated, and threats continue to impact the species. Impacts of multiple threats typically operate synergistically, particularly when populations of a species are decreasing. Initial effects of one threat factor can later exacerbate the effects of other threat factors (Gilpin and Soulé 1986, pp. 25–26). Further fragmentation of populations can decrease the fitness and reproductive potential of the species, which will exacerbate other threats. Lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches. Within the preceding review of the five factors, we have identified multiple threats that may have interrelated impacts on this species in Mesoamerica. For example, deforestation provides access to previously inaccessible areas, thereby opening up new areas of the species' range to the threat of illegal poaching. Thus, the species' productivity in Mesoamerica may be reduced because of any of these threats, either singularly or in combination. The most significant threats in this region are habitat loss and poaching, particularly as populations in this region are small and fragmented, and the species requires a large range and variety of food sources. These threats occur at a scale sufficient to affect the status of the species in Mesoamerica both now and in the future. In addition, the species' current range in Mesoamerica is highly restricted and severely fragmented. The species' small population size, and its reproductive and life-history traits, combined with its highly restricted and severely fragmented range, increase the species' vulnerability to adverse natural events and human activities that eliminate habitat, reduce nesting success of breeding pairs, and remove individuals from these populations. The susceptibility to extirpation of limited-range species can occur for a variety of reasons, such as when a species' remaining population is so small or its distribution so fragmented that it may no longer be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). Although populations in this region have a high level of genetic diversity, they remain vulnerable to stochastic demographic and environmental events. Therefore, we find that the small sizes and isolated ranges of populations of the species in Mesoamerica, in combination with other threats identified above, are threats to the continued existence of the scarlet macaw throughout Mesoamerica, including the entire range of the subspecies *A. m. cyanoptera* and the range of *A. m. macao* in Costa Rica, Panama, and northwest Columbia, now and in the future.

Finding

Scarlet Macaw (*A. macao*) Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the scarlet macaw is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the scarlet macaw. We reviewed the petition, information available in our files, and other available published and unpublished information.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes an actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

The scarlet macaw has the broadest range of any macaw. Over 80 percent of the species' range occurs in the Amazon, and the scarlet macaw is considered widespread and relatively common in this region. Habitat destruction and modification as a result of deforestation and forest degradation occurs in the Amazon, but the majority of the area affected occurs in south and east Brazil, and projected forest loss in the Amazon still leaves large areas of intact forest outside Brazil and in northwest Brazil by 2050. Poaching for the pet trade and hunting occur, but we have no information indicating that the magnitude of this threat places the species in danger of extinction throughout its range now or in the foreseeable future. In Peru, where poaching for the pet trade was initially believed to be a threat, it has been found in trade only in small numbers. Additionally, we are aware of no information indicating that disease, predation, inadequacy of existing regulatory mechanisms, other factors, or the cumulative impact of factors place the species in danger of extinction in the Amazon now or within the foreseeable future. According to BLI (2011a, unpaginated), the scarlet macaw is suspected of being in decline globally, and, as discussed in *Distribution and Abundance*, evidence indicates that scarlet macaw numbers and distribution have been much reduced over the past few decades in Mesoamerica. However, we found no evidence that the species is declining in the Amazon except around human population centers, and much of the species' range in the Amazon is remote from human populations. For these reasons, and because large areas of intact forest are projected to remain in the Amazon for the next few decades, it is reasonable to conclude that if the suspected population decline of scarlet macaws is occurring throughout its range, it is unlikely to be occurring at a rate that puts the species in danger of extinction now or in the foreseeable future.

Because the best available information indicates that the scarlet macaw in the majority of its range is not in danger of extinction (endangered), or likely to become so in the foreseeable future

(threatened), we conclude that listing the species under the Act is not warranted at this time.

Having determined that listing the species throughout its range is not warranted, we next consider whether listing either subspecies, *Ara macao cyanoptera* or *Ara macao macao*, is warranted.

Northern Subspecies (*A. m. cyanoptera*) Finding

The northern subspecies of scarlet macaw, *A. m. cyanoptera*, inhabits the species' current range in Mexico, Guatemala, Belize, Honduras, and Nicaragua. This status review identified threats to *A. m. cyanoptera* attributable to Factors A, B. D, and E. The primary threats to this subspecies are habitat loss, illegal capture for the pet trade, the inadequacy of regulatory mechanisms that address these threats, and small population size combined with the cumulative effects of threats. Habitat destruction and modification (Factor A) in the form of deforestation and forest degradation are occurring throughout the subspecies' range. Illegal capture for the pet trade (Factor B) is also likely occurring throughout the subspecies' range, and is exacerbated by deforestation because deforestation increases access to the subspecies. Regulatory mechanisms (Factor D) are inadequate to prevent further loss of forest habitat and continued capture and trade of the species throughout the subspecies' range.

Although little quantitative data on historical populations are available, the range of this subspecies has been greatly reduced and fragmented over the past several decades. It is, therefore, clear that the global population of *A. m. cyanoptera* has experienced a large decline, primarily due to loss of habitat and capture for the pet trade. As a result, the current global population is estimated to be 4,000 or fewer individuals (see *Distribution and Abundance*).

Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range," and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Given (1) the large extent of the decline in the subspecies' range and numbers in recent decades due to habitat destruction and modification and capture for the illegal pet trade, (2) that these threats are ongoing within the range of the subspecies, (3) that existing regulatory mechanisms addressing these threats are inadequate, and (4) we found no information indicating that these threats are being ameliorated, we find that these threats are immediate and significant and place the subspecies *A. m. cyanoptera* in danger of extinction at this time. Therefore, on the basis of the best scientific and commercial information available, we find that *A. m. cyanoptera* meets the definition of an "endangered" species under the Act, and we are proposing to list this subspecies as endangered throughout its range.

We have reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species in accordance with section 4(b)(7) of the Act is warranted. We have determined that issuing an emergency regulation temporarily listing *A. m. cyanoptera* is not warranted for this subspecies at this time because there are no impending actions that might result in extinction of the species that would be addressed and alleviated by emergency listing. However, if at any time we determine that issuing an emergency regulation temporarily listing *A. m. cyanoptera* is warranted, we will initiate this action at that time.

Southern Subspecies (*A. m. macao*) Finding

The southern subspecies of scarlet macaw, *A. m. macao*, inhabits the species' range from Costa Rica southward into South America. As with the species as a whole, the vast majority of the range of *A. m. macao* (greater than 80 percent) occurs in the Amazon. Therefore, for the reasons discussed under our finding for the species, *A. macao*, located above, we find that listing this subspecies throughout its range is not warranted.

Having determined that listing the whole subspecies of *A. m. macao* is not warranted, we now consider whether there are any distinct population segments (DPSes) of the subspecies that warrant listing under the Act.

Distinct Population Segments

Section 3(16) of the Act defines "species" to include "any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." To interpret and implement the DPS provisions of the Act and Congressional guidance, the Service and National Marine Fisheries Service published a policy regarding the recognition of distinct vertebrate population segments in the **Federal Register** (DPS Policy) on February 7, 1996 (61 FR 4722). Under the DPS policy, three factors are considered in a decision concerning the establishment and classification of a possible DPS. These are applied similarly to endangered and threatened species. The first two factors—discreteness of the population segment in relation to the remainder of the taxon and the significance of the population segment to the taxon to which it belongs—bear upon whether the population segment is a valid DPS. If a population meets both tests, it is a DPS, and then the third factor is applied—the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.*, is the population segment endangered or threatened?).

Discreteness Analysis

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either of the following 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 boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Genetic studies of scarlet macaws from throughout the species' range show that *A. m. macao* north and west of the Andes mountains (those in Costa Rica, Panama, and northwest Columbia) are genetically different from those south and east of the Andes (northern South America). indicating birds in these two areas represent separate populations (Schmidt 2011, pers. comm.). The Andes reach over 5,700 m (18,701 ft) in elevation in Columbia, with few passes below 1,600 m (5,249 ft) (Parsons 1982, pp. 254–256), and the highest elevation at which scarlet macaws have been recorded is approximately 1,500 m (4,921 ft). Thus, the Andes represent a major physical barrier separating these two populations. Therefore, we conclude that *A. m. macao* north and west of the Andes are markedly separated from *A. m. macao* south and east of the Andes and represent two discrete populations.

Significance Analysis

If a population segment is considered discrete under one or more of the conditions described in our DPS policy,

its biological and ecological significance is to be considered in light of Congressional guidance that the authority to list DPSes be used "sparingly" while encouraging the conservation of genetic diversity. In carrying out this examination, we consider available scientific evidence of the population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to: (1) Its persistence in an ecological setting unusual or unique for the taxon; (2) evidence that its loss would result in a significant gap in the range of the taxon; (3) evidence that it is the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the DPS differs markedly from other populations of the species in its genetic characteristics. A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, the list of criteria is not exhaustive; other criteria may be used, as appropriate. Below, we consider the biological and ecological significance of the *A. m. macao* populations on either side of the Andes.

Evidence indicates that loss of either population of *A. m. macao* would result in a significant gap in the range of the subspecies. The subspecies' range south and east of the Andes comprises well over 90 percent of its entire range (considering that the Amazon comprises an estimated 83 percent of the entire range of the species), all of its range in the Amazon, and the vast majority of its range on the South American continent (all but northwest Columbia). Therefore, its loss would result in a significant gap in the range of the subspecies.

Although considerably smaller, the area of the subspecies' range north and west of the Andes inhabits a unique geographical position in the range of the subspecies. It is located partly on the Central American isthmus, a biological transition zone between the north and south American continents and a biodiversity "hotspot" (Muller and Patry 2011, p. 80; Myers *et al.* 2000, entire). This population occurs in the only area of the subspecies range located on the Central American isthmus, and the only area where the subspecies occurs on the Pacific slope of Central or South America. It is also the only area of the subspecies range with a connection to the range of *A. m. cyanoptera*. The population of *A. m. macao* north and west of the Andes includes, in northern Costa Rica (the transition zone also extends into southern Nicaragua) (Wiedenfeld 1994, pp. 100–101), and, together with genetic differences between the two populations of *A. m. macao*, indicates that a loss of the population north and west of the Andes would represent a significant loss to the genetic diversity of the subspecies. Loss of this population would also result in elimination of the subspecies from Central America and subsequent loss of the connection, and subsequently the transition zone, between populations of the two subspecies of scarlet macaw. Thus, we conclude that loss of the population of *A. m. macao* north and west of the Andes would result in a significant gap in the subspecies' range.

We conclude that loss of either population of *A. m. macao* (the population north and west of the Andes or the population south and east of the Andes) would create a significant gap in the range of the subspecies. Therefore, because we find these two population segments to be discrete and because they meet the significance criterion, with respect to evidence that loss of either population segment would result in a significant gap in the range of the taxon, both qualify as DPSes under the Act. For the remainder of this document, we refer to the DPS north and west of the Andes as the northern DPS of *A. m. macao*, and the DPS south and east of the Andes as the southern DPS of *A. m. macao*.

Finding for the Northern DPS of *A. m. macao*

We are unaware of any information on the numbers, if any, or status of *A. m. macao* in northwest Columbia. Therefore, we limit our discussion here to populations in Costa Rica and Panama, and request information from the public on the status of the subspecies in northwest Columbia (see Information Requested).

This status review identified threats to the scarlet macaw attributable to Factors A, B, D, and E, in Costa Rica and Panama. The primary threats to the northern DPS of *A. m. macao* are habitat loss, illegal capture for the pet trade, the inadequacy of regulatory mechanisms that address these threats, and small population size combined with the cumulative effects of threats. Habitat destruction and modification (Factor A) in the form of deforestation and forest degradation are likely occurring in the range of two of the three populations in this region (the populations in southern Pacific Costa Rica and Panama). Illegal capture for the pet trade (Factor B) is also likely occurring in the range of all three populations in this region, and is exacerbated by deforestation because deforestation increases access to these birds. Regulatory mechanisms (Factor D) are inadequate to prevent further loss of forest habitat and continued capture and trade of the species throughout this region.

Although quantitative data on historical populations are not available, as discussed above, the range of *A. m. macao* north and west of the Andes has been greatly reduced and fragmented over the past several decades. The species has been almost completely eliminated from Panama, and has been eliminated from 80 percent of its range in Costa Rica, primarily due to loss of habitat and capture for the pet trade.

Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range," and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Given (1) the large extent of the decline of the subspecies within the northern DPS of *A. m. macao* in recent decades due to habitat destruction and modification and capture for the illegal pet trade, (2) that these threats are ongoing within the range of this DPS, (3) that existing regulatory mechanisms addressing these threats are inadequate, and (4) we found no information indicating that these threats are being ameliorated, we find that these threats are immediate and significant and place the northern DPS of *A. m. macao* in danger of extinction at this time. Therefore, on the basis of the best scientific and commercial information available, we find that the northern DPS of *A. m. macao* meets the definition of an "endangered species" under the Act, and we are proposing to list the northern DPS of *A. m. macao* as endangered throughout its range.

Finding for the Southern DPS of *A. m. macao*

This DPS of *A. m. macao* inhabits the vast majority of the subspecies range in South America. As with the species range, and subspecies range, the vast majority of the range of this DPS occurs in the Amazon. Therefore, for the reasons discussed under our finding for the species *A. macao* located above, we find that listing this DPS throughout its range is not warranted.

Having determined that listing the southern DPS of *A. m. macao* is not warranted, we next look at whether the southern DPS may be endangered or threatened with extinction in a significant portion of its range.

Significant Portion of the Range

Having determined that the southern DPS of *A. m. macao* is not endangered

or threatened throughout its range, we must next consider whether there are any significant portions of the DPS where *A. m. macao* is in danger of extinction or is likely to become endangered in the foreseeable future.

The Act defines "endangered species" as any species which is "in danger of extinction throughout all or a significant portion of its range," and "threatened species" as any species which is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The definition of "species" is also relevant to this discussion. Section 3(16) of the Act defines "species" as follows: "The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature." The phrase "significant portion of its range" (SPR) is not defined by the statute, nor addressed in our regulations. For example, neither the statute nor its implementing regulations describes the consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range, or explains what qualifies a portion of a range as "significant."

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined "species": *Defenders of Wildlife* v. *Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, April 2, 2009); and *WildEarth Guardians* v. *Salazar*, 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a "species," as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of "species." The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of "endangered species" or "threatened species," it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase "significant portion of its range" in the Act's definitions of "endangered species" and "threatened species" to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an "endangered species." The same analysis applies to "threatened species." Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species will be listed as endangered or threatened, respectively, and the Act's protections will be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (i.e., prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase "significant portion of its range" provides an independent basis for listing and protecting the entire species, we next turn to the meaning of "significant" to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is "significant," we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for "significant" in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of "significant" best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is "significant" if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be "significant" due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as "significant" by asking whether *without that portion*, the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be "endangered"). Conversely, we would not consider the portion of the range at issue to be "significant" if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of "significant" (a portion of the range of a species is "significant" if its contribution to the viability of the

species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for "significant" that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered "significant" even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be range-wide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for "significant" that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered "significant" only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton*, 258 F.3d 1136 (9th Cir. 2001).

The definition of "significant" used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. However, we have not set the threshold so high that the phrase "in a significant portion of its range" loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be currently imperiled everywhere. Under the definition of "significant" used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.*, if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the complete extirpation (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be "significant," and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not "significant," we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is "significant." In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of "significant," such portions will not warrant further consideration.

SPR Analysis for the Southern DPS of A. m. macao

After reviewing the potential threats throughout the range of the southern DPS of *A. m. macao*, we determine that two areas, the area referred to as the arc of deforestation in the southern and eastern Amazon (in the Brazilian states of Para, Mato Grosso, Rondonia, and Acre) and the Brazilian state of Roraima, have concentrated threats (see discussion under *Factor A*), as 90 percent of deforestation in the Amazon occurs in these areas (INPE 2005, in Asner *et al.* 2005, p. 480). We next consider the contribution of these two portions to determine if these areas are significant, as described above.

As discussed under Factor A, above, the Amazon covers approximately 6.7 million km² (2.6 million mi²) in 9 countries and 1 territory of France. Even with the loss of either or both portions discussed above, large tracts of the DPS would remain, including large tracts of remote forest in northwest Brazil, Suriname, Guyana, French Guiana, eastern Peru, and southeast Columbia. Thus, even without either or both portions of the range identified above, large areas of the range of the southern DPS of *A. m. macao* would remain. As discussed above, *A. m. macao* in the Amazon are reported to be common, widely distributed, genetically similar, and have high genetic variability. Thus, it is reasonable to conclude that *A. m. macao* in the remaining forest outside the identified portions would be common, widely distributed, and have high genetic variability. Further, although little information exists on movements of scarlet macaws in the Amazon, scarlet macaws are not migratory, and although they are nomadic to some degree, we know of no information suggesting that the two portions discussed above are required for the survival of the portion of the southern DPS of *A. m. macao* that occurs outside the two portions discussed above. Therefore, because (1) the remaining portion includes large areas of intact forest in several areas of the Amazon, (2) scarlet macaws in these remaining areas have high genetic diversity and are likely common and widely distributed, and (3) scarlet macaws are not migratory and thus the survival of scarlet macaws outside the two identified portions are unlikely to depend on the existence of the two identified portions, we conclude that remaining portion of the southern DPS of *A. m. macao* is likely to offer sufficient resiliency, redundancy, and representation to the DPS such that the DPS would not be in danger of extinction if the two portions identified above were completely lost.

In summary, despite having some locations of elevated risk to potential threats, we conclude that the portions of the southern DPS of *A. m. macao*'s

range where these threats occur are not significant portions of its range. Even if scarlet macaws in these locations were extirpated at some time in the future, the DPS would persist at locations not affected by these threats. The existing, remaining population would be distributed across a large region of the Amazon in Suriname, Guyana, French Guayana, northwest Brazil, southeast Colombia, eastern Ecuador, and eastern Peru, and would provide adequate redundancy, resiliency, and representation to the DPS. Therefore, the two identified portions (whether considered separately or combined) are not a "significant" portion of the species' range because their contribution to the viability of the species is not so important that the species would be in danger of extinction without those portions.

We find that the southern DPS of *A. m. macao* is not in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing the southern DPS of *A. m. macao* as endangered or threatened under the Act is not warranted at this time. We find that the southern DPS of *A. m. macao* is not in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing the southern DPS of *A. m. macao* as endangered or threatened under the Act is not warranted at this time. However, for law enforcement purposes, we are considering listing this DPS, and intraspecific crosses of scarlet macaws, based on similarity of appearance to entities proposed for listing in this document, and request information from the public pertaining to this subject (see Information Requested).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, 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 to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued 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 17.32 for threatened species. With regard to endangered wildlife, a permit may 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. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

Peer Review

In accordance with our policy, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and the data that are the basis for our conclusions regarding this proposal to list as endangered the northern scarlet macaw subspecies (*Ara macao cyanoptera*) and the northern DPS of the southern scarlet macaw subspecies (*Ara macao macao*), under the Act.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, our final decision may differ from this proposal.

Required Determinations

Clarity of 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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, 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 names 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov*, Docket No. FWS–R9–ES–2012–0039, or upon request from the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this notice are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding new entries for "Macaw, scarlet" in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Macaw, scarlet	*Ara macao cyanoptera.*	Mexico, Guatemala, Belize, El Salvador, Honduras, Nicaragua.	Entire	E	.....	NA	NA
Macaw, scarlet	*Ara macao macao*	Costa Rica, Panama, Colombia, Ecuador, Peru, Suriname, Guyana, French Guiana, Brazil, Bolivia.	Costa Rica, Panama, and the portion of Colombia north and west of the Andes.	E	.....	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: June 26, 2012.

Gregory Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–16445 Filed 7–5–12; 8:45 am]

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