FEDERAL REGISTER

Vol. 78 Thursday
No. 168 August 29, 2013

OFFICE OF THE FEDERAL REGISTER

UNITED STATES GOVERNMENT PRINTING OFFICE

FEDERAL REGISTER

Vol. 78 Thursday,
No. 168 August 29, 2013

Pages 53237–53624

OFFICE OF THE FEDERAL REGISTER

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WHEN: Tuesday, September 17, 2013
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WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0808; Directorate Identifier 2010–NM–170–AD; Amendment 39–17380; AD 2013–05–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting airworthiness directive (AD) 2013–05–08 that published in the **Federal Register**. AD 2013–05–08 applies to all Airbus Model A330–200 and A330–300 series airplanes, and Model A340–200 and A340–300 series airplanes. Two paragraphs of AD 2013–05–08 incorrectly specify flight control secondary computers (FCSCs), rather than flight control primary computers (FCPCs). This document corrects those errors. In all other respects, the original document remains the same.

DATES: This final rule is effective August 29, 2013. The effective date for AD 2013–05–08, Amendment 39–17380 (78 FR 27015, May 9, 2013), remains June 13, 2013.

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2013–05–08, Amendment 39–17380 (78 FR 27015, May 9, 2013), currently requires, depending on airplane configuration, modifying three flight control primary computers (FCPCs); modifying two flight control secondary computers (FCSCs); revising the airplane flight manual (AFM) to include certain information; replacing certain O-rings; and checking part number and replacing certain O-ring seals if needed.

As published, AD 2013–05–08, Amendment 39–17380 (78 FR 27015, May 9, 2013), currently includes typographical errors in paragraphs (p)(4) and (p)(5) of the AD, which specify FCSCs, instead of flight control primary computers FCPCs.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of AD 2013–05–08, Amendment 39–17380 (78 FR 27015, May 9, 2013), remains June 13, 2013.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of May 9, 2013, on page 27019, in the third column, paragraphs (p)(4) and (p)(5) of AD 2013–05–08, Amendment 39–17380 (78 FR 27015, May 9, 2013), are corrected to read as follows:

* * * * *

(4) This paragraph provides credit for modification or replacement of the FCPCs specified in paragraph (o)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–27–3176, dated July 26, 2011; or Airbus Mandatory Service Bulletin A330–27–3176, Revision 01, dated March 27, 2012 (for Model A330 airplanes).

* * * * *

(5) This paragraph provides credit for modification or replacement of the FCPCs specified in paragraph (o)(4) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A340–27–4162, dated January 10, 2012 (for Model A340 airplanes).

* * * * *

Issued in Renton, Washington, on August 21, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–21078 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0339; Airspace Docket No. 12–AEA–15]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes; Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes two new low-altitude RNAV routes, designated T–287 and T–299, to enhance the flow of air traffic to the west of the Washington-Dulles International Airport. Also, there is a name change to one of the navigation fixes; an adjustment to the coordinates of another navigation fix, and a change from a waypoint to a fix for a navigation point.

DATES: Effective date 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On April 29, 2013, the FAA published in the **Federal Register** a notice of

proposed rulemaking (NPRM) to establish two new RNAV routes in the Washington, DC area (82 FR 25006). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received.

Discussion of Comments

The Aircraft Owners and Pilots Association (AOPA) commented that they do not support the establishment of T–287 and T–299 and advocated that the FAA withdraw the proposal. AOPA contended that aircraft already are able to circumnavigate the Washington-Dulles (IAD) arrival flows by using existing Victor airways; thus, pilots will avoid use of the proposed T-routes because they are inefficient and lack benefit.

T–287 and T–299 were developed to allow aircraft to navigate via routes that are procedurally separated from the NextGen Optimized Profile Descent arrival procedures in the IAD area. While the new routes may result in more track miles flown as compared to nearby V–143, it should be noted that, during busy periods, Air Traffic Control vectors aircraft on V–143 vectored off the airway to the west very near the tracks of the new T-routes. Aircraft filed via V–377 will fly a shorter distance and more direct routing with the new routes. T–287 and T–299 allow for unrestricted optimized profile descents into the IAD area. The routes were not designed to push traffic farther away from Class B airspace, but to provide additional options for pilots and air traffic controllers alike during weather and high volume traffic periods. Since they mimic the tracks already used for vectoring aircraft, the T-routes provide more consistent, predicable and precise routing. The FAA believes that these routes do benefit both pilots and air traffic controllers.

AOPA further contended that T-routes must be established within Class B airspace to retain an equivalent level of service and access for general aviation. AOPA asserted that, if future T-route development is limited to locations significantly outside the boundaries of Class B airspace, general aviation will loose the limited access it currently has.

Originally, T-routes were developed to serve as "Area Navigation IFR Terminal Transition Routes (RITTR)." RITTRs were intended to provide more direct routing and expedite movement of aircraft around or through congested terminal airspace areas (such as Class B airspace) using RNAV capabilities. In 2007 the FAA decided to discontinue the use of the term "RITTR" in favor of applying the "T-route" designator to all published RNAV routes below 18,000 feet MSL, whether their purpose is to provide more direct access through terminal airspace (such as Class B) or as part of the low altitude en route structure. This change does not alter the fact that T-routes may still be established specifically to enable transit through Class B airspace areas.

AOPA criticized the Washington DC "Optimization of Airspace and Procedures in a Metroplex (OAPM)" effort in that this rule did not include T-routes through the Washington Tri-Area Class B airspace area. AOPA suggested another location for a T-route through the Washington Class B airspace area.

This rule represents just one part of the DC OAPM effort. While a separate DC OAPM rulemaking action included the establishment of two T-routes (T–291 and T–295) through the east side of the Washington Tri-Area Class B airspace (78 FR 37104, June 20, 2013), establishing T-routes through the Class B airspace is outside the scope of this specific rule. The Washington Tri-Area Class B area is currently under review for possible modification in the future. An Ad Hoc Committee was formed to recommend possible Class B changes to the FAA. The FAA is reviewing the Committee's recommendations and will initiate further public participation at a later date. The issue of access through the Class B will be considered as part of that effort. It should be noted that any future DC Class B modifications will be influenced by the requirements of the "Washington, DC Metropolitan Area Special Flight Rules Area (14 CFR part 93, subpart V)."

Differences From the NPRM

This rule corrects an error in the header line of the legal description of RNAV route T–287, as published in the NPRM, by removing the abbreviation "(GVE)." GVE was mistakenly inserted in the NPRM and is not a part of the T–287 description. The coordinates for the WILMY waypoint in T–287 were adjusted slightly along the track to facilitate a more optimum minimum en route altitude. This rule also changes the name of the "HAANK" waypoint in T–299 to "UCREK." After the NPRM was published, it was found that the name "HAANK" was unavailable. The latitude/longitude coordinates for UCREK are the same as were listed for HAANK in the NPRM. Also in T–299, the "SCAPE" navigation point is changed from a "waypoint" to a "fix." Except for these corrections and editorial changes, this rule is the same as published in the NPRM.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish two new RNAV routes (T–287 and T–299) west of the Washington-Dulles International Airport (IAD) area. The new routes support the Washington, DC Optimization of Airspace and Procedures in a Metroplex (OAPM) project and enable aircraft to circumnavigate IAD arrival flows. Aircraft transiting through the Washington, DC area are routinely vectored to the west of the IAD area in order to separate them from the major arrival flows into the IAD area. T–287 and T–299 are designed to mimic the flight paths currently used for vectoring these transiting aircraft. The routes provide consistent and predictable routing for aircraft to file and navigate while being assured of separation from larger turbojet aircraft entering and exiting the Washington, DC area. Further, the routes reduce air traffic controller workload and enhance efficiency within the National Airspace System.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes RNAV routes to as required to preserve the safe and efficient flow of air traffic in the Washington, DC area.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–287 DENNN, VA to TOMYD, MD [New]		
DENNN, VA	WP	(Lat. 38°05′06″ N., long. 078°12′28″ W.)
CAARY, VA	WP	(Lat. 38°19′40″ N., long. 078°23′37″ W.)
WILMY, VA	WP	(Lat. 38°32′30″ N., long. 078°33′32″ W.)
KAIJE, VA	WP	(Lat. 38°44′35″ N., long. 078°42′48″ W.)
BAMMY, WV	WP	(Lat. 39°24′33″ N., long. 078°25′46″ W.)
REEES, PA	WP	(Lat. 39°47′52″ N., long. 077°45′56″ W.)
TOMYD, MD	WP	(Lat. 39°40′ 52″ N., long. 077°08′26″ W.)
T–299 UCREK, VA to SCAPE, PA [New]		
UCREK, VA	WP	(Lat. 38°01′33″ N., long. 079°02′56″ W.)
KAIJE, VA	WP	(Lat. 38°44′35″ N., long. 078°42′48″ W.)
BAMMY, WV	WP	(Lat. 39°24′33″ N., long. 078°25′46″ W.)
REEES, PA	WP	(Lat. 39°47′52″ N., long. 077°45′56″ W.)
SCAPE, PA	Fix	(Lat. 39°56′42″ N., long. 077°32′12″ W.)

Issued in Washington, DC, on August 21, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–21004 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0504; Airspace Docket No. 13–AEA–3]

RIN 2120–AA66

Establishment, Modification and Cancellation of Air Traffic Service (ATS) Routes; Northeast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies two jet routes, six VOR Federal airways, and three area navigation routes; establishes six area navigation (RNAV) routes; and cancels two VOR Federal airways in the northeast United States. This action is necessary due to the decommissioning of the Lake Henry, PA, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) facility which provides navigation guidance for portions of the affected routes. This action enhances the safe and efficient management of aircraft within the National Airspace System.

DATES: Effective date 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

The FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend two jet routes, six VOR Federal airways, and three area navigation routes; establish six area navigation (RNAV) routes; and cancel two VOR Federal airways in the northeast United States (78 FR 38236, June 26, 2013). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received. The Aircraft Owners and Pilots Association (AOPA) did not oppose the modifications but encouraged the FAA to utilize stakeholders in developing an air traffic service route modernization plan.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying jet routes J–36 and J–68; VOR Federal airways V–58, V–93, V–106, V–126, V–149, V–408; and RNAV routes T–212, T–291 and T–295. This action also establishes new RNAV routes Q–436, Q–438, Q–440, T–216, T–218 and T–221. In addition, VOR Federal airways V–153 and V–449 are cancelled. The decommissioning of the Lake Henry VORTAC (LHY) facility has made this action necessary.

The specific route changes are outlined below.

J–36: J–36 is amended by eliminating the segment of the route between Flint, MI (FNT) and Sparta, NJ (SAX). A new

RNAV route, Q–436, as described below, replaces the cancelled segment. Most aircraft utilizing J–36 are RNAV equipped, so replacing the above J–36 segment with an RNAV route furthers the transition to an RNAV route structure and supports the NextGen initiative.

J–68: J–68 is modified by eliminating the route segments between FNT and Dunkirk, NY (DKK), supporting the transition to RNAV and reducing chart clutter. RNAV routes Q–436, Q–438 and Q–440 (see below), as well as other jet routes, provide alternative routings through the area. The portion of J–68 between Hancock, NY (HNK) and Nantucket, MA (ACK) is retained.

Q–436: Q–436 is a new route extending between the EMMMA, MI, fix and the COATE, NJ, fix. Q–436 replaces the cancelled segments of J–36 and that part of J–68 that extends between FNT and DKK. The routing of Q–436 from COATE, NJ, to a point southeast of DKK is an exact overlay of the segments of J–36 that are cancelled (see above). From this point Q–436 continues westbound providing a more direct routing for aircraft transiting from the New York area and landing in Chicago, IL.

Q–438 and Q–440: RNAV route Q–438 extends between the RUBYY, MI, WP and the RAAKK, NY, WP. Q–440 extends between the SLLAP, MI, WP and the RAAKK, NY, WP. From a point southeast of DKK, Q–438 and Q–440 diverge from Q–436 providing segregation between Chicago arrivals and aircraft overflying the Chicago area. Although not directly tied to the LHY VORTAC decommissioning, these additional Q-routes serve to reduce ATC sector complexity, allow overflight aircraft to be cleared to their cruising altitude more expeditiously and provide a more direct routing to destinations west of Chicago; therefore, they are included in this rule.

V–58: V–58 is modified by eliminating the segments between Williamsport, PA (FQM) and the HELON, NY, intersection. Following this gap, the airway resumes its charted track between HELON and ACK. In addition, the Franklin, PA 175° radial is changed to the 176° radial to correct a mathematical rounding error.

V–93: The modified V–93 extends between Patuxent, MD VORTAC (PXT) and the new LAAYK, PA intersection. The segments between LAAYK, PA, and HELON, NY, are deleted. The route then resumes its charted track between HELON, NY, and the United States/Canadian Border.

V–106: V–106 is realigned to the LAAYK, PA, fix in lieu of the LHY VORTAC and that portion of the airway between LAAYK, PA, and Barnes, MA (BAF) is deleted. Following that gap, the airway resumes its charted track between the Barnes, MA VORTAC (BAF) and the Kennebunk, ME VORTAC (ENE). This change is made because similar routing is available via other conventional airways (e.g., V–34 from WEETS, NY, to Pawling, NY (PWL) then V–405 to BAF). The change also reduces chart clutter. As described below, T–212 replaces the deleted segments of V–106.

V–126: V–126 is modified by eliminating the segment between Stonyfork, PA (SFK) and SAX. The new RNAV route T–218 replaces the cancelled segments of V–126.

V–149: V–149 is modified by replacing the LHY VORTAC with the LAAYK, PA, fix (formed by radials from the CFB and FJC VORTACs). In addition, the segment of V–149 between the MAZIE fix and the Allentown, PA VORTAC (FJC) is removed because the FJC 147°(M) radial, upon which it is based, does not pass flight inspection. The new T–221 overlies this removed segment as described below.

V–153: V–153 is removed in its entirety based on other available route alternatives and minimal usage by air traffic.

V–408: V–408 is modified by eliminating the segments between FJC and SAGES. The eliminated portion is replaced by the extension of T–295, as described below.

V–449: V–449 is removed in its entirety. With the LHY decommissioning, the remainder of the airway does not pass flight inspection. An extension of T–291, as described below, replaces this airway.

T–212: T–212 is extended to the west by adding segments between the RASHE, PA, fix (formed by the intersection of radials from the Selinsgrove, PA (SEG), and the Philipsburg, PA, (PSB) VORTACs and the WEARD, NY, fix. The amended T–212 replaces the cancelled segment of V–106 between the LAAYK, PA, and the WEETS, NY fixes.

T–216: T–216 is a new route that extends between the PSB and the Nantucket, MA, VOR/DME (ACK). T–216 overlies V–58 between PSB and ACK, and also replaces the cancelled portion of V–93 between the LAAYK INT and the HELON fix.

T–218: T–218 is a new route that extends between the Stonyfork, PA (SFK), VOR/DME and the Sparta, NJ, VORTAC (SAX). T–218 replaces V–126 between SFK and SAX.

T–221: T–221 is a new route that extends between the MAZIE, PA, fix and the Albany, NY, VORTAC (ALB). T–221 overlies V–149 between the MAZIE, PA, fix and Binghamton, NY (CFB).

T–291: T–291 is extended northward between HAR and ALB. The extended route overlies V–31 to Selinsgrove, PA (SEG), then proceeds direct to Milton, PA (MIP), and from MIP it replaces V–449 by way of the LAAYK, PA, fix and terminates at ALB.

T–295: T–295 is extended northward to the Princeton, ME, VOR/DME (PNN). T–295 overlies V–93 from Lancaster, PA (LRP) through Wilkes-Barre, PA (LVZ), to the LAAYK, PA, fix and replaces V–408 from LAAYK, PA, to the SAGES, NY, fix where it turns and overlies V–292 to the SASHA, MA, fix. T–295 then continues northbound overlying V–93 to PNN.

This rule includes several minor differences from the NPRM. Specifically, the LAAYK, PA, WP is redescribed as a "Fix." In the V–58 description, the Franklin, PA, 175° radial is changed to the 176° radial. In the T–295 description, the Kennebunk, ME, VORTAC is reclassified as a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME). Except for these, and editorial changes, this rule is the same as published in the NPRM.

Jet routes are published in paragraph 2004; high altitude RNAV routes (Q) are published in paragraph 2006; VOR Federal airways are published in paragraph 6010(a); and low altitude RNAV routes (T) are published in paragraph 6011, respectively, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The jet routes, Q routes, VOR Federal airways and T routes listed in this document will be subsequently published in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority because it modifies the route structure as required to preserve the safe and efficient flow of air traffic.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes

* * * * *

J–36 [Amended]

From Mullan Pass, ID, via Great Falls, MT; Dickinson, ND, via Fargo, ND; Gopher, MN; Nodine, MN; INT Nodine 116° and Badger, WI, 271° radials; Badger; INT Badger 086° and Flint, MI, 278° radials; to Flint.

J–68 [Amended]

From Gopher, MI, INT Gopher 109° and Dells, WI, 310° radials; Dells; Badger, WI; INT Badger 086° and Flint, MI, 278° radials; to Flint. From Hancock, NY; INT Hancock 082° and Putnam, CT, 293° radials; Putnam; Providence, RI; to Nantucket, MA.

* * * * *

Paragraph 2006 United States Area Navigation Routes

Q–436 EMMMA, MI to COATE, NJ [New]

EMMMA, MI	FIX	(Lat. 42°53′04″ N., long. 084°34′50″ W.)
YARRK, (Canada)	WP	(Lat. 42°31′22″ N., long. 081°16′06″ W.)
CHAAP, (Canada)	WP	(Lat. 42°30′19″ N., long. 080°40′57″ W.)
RAAKK, NY	WP	(Lat. 42°23′59″ N., long. 078°54′39″ W.)
HERBA, NY	WP	(Lat. 42°14′35″ N., long. 078°16′28″ W.)
LAAYK, PA	Fix	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
COATE, NJ	FIX	(Lat. 41°08′10″ N., long. 074°41′43″ W.)

Excluding the airspace in Canada.

Q438 RUBYY, MI to RAAKK, NY [New]

RUBYY, MI	WP	(Lat. 43°01′04″ N., long. 084°35′16″ W.)
Flint, MI (FNT)	VORTAC	(Lat. 42°58′00″ N., long. 083°44′49″ W.)
TWIGS, MI	WP	(Lat. 42°48′34″ N., long. 082°33′10″ W.)
JAAJA, (Canada)	WP	(Lat. 42°40′00″ N., long. 081°16′00″ W.)
FARGN, (Canada)	WP.	(Lat. 42°36′42″ N., long. 079°47′18″ W.)
RAAKK, NY	WP	(Lat. 42°23′59″ N., long. 078°54′39″ W.)

Excluding the airspace in Canada.

Q440 SLLAP, MI to RAAKK, NY [New]

SLLAP, MI	WP	(Lat. 43°27′00″ N., long. 084°56′20″ W.)
Flint, MI (FNT)	VORTAC	(Lat. 42°58′00″ N., long. 083°44′49″ W.)
TWIGS, MI	WP	(Lat. 42°48′34″ N., long. 082°33′10″ W.)
JAAJA, (Canada)	WP	(Lat. 42°40′00″ N., long. 081°16′00″ W.)
FARGN, (Canada)	WP	(Lat. 42°36′42″ N., long. 079°47′18″ W.)
RAAKK, NY	WP	(Lat. 42°23′59″ N., long. 078°54′39″ W.)

Excluding the airspace in Canada.

* * * * *

Paragraph 6010 VOR Federal Airways

V–58 [Amended]

From INT Franklin, PA, 176° and Clarion, PA, 222° radials, via INT Clarion 222° and Philipsburg, PA, 272° radials; Philipsburg; to Williamsport, PA. From INT Sparta, NJ 018° and Kingston, NY, 270° radials; Kingston; INT Kingston 095° and Hartford, CT, 269° radials; Hartford; Groton, CT; Sandy Point, RI; to Nantucket, MA. The airspace within R–4105 is excluded during times of use.

V–93 [Amended]

From Patuxent River, MD, INT Patuxent 013° and Baltimore, MD, 122° radials; Baltimore; INT Baltimore 004° and Lancaster, PA, 214° radials; Lancaster; Wilkes-Barre, PA; to INT Wilkes-Barre 037° and Sparta, NJ 300° radials. From INT Sparta 018° and Kingston, NY, 270° radials; Kingston; Pawling, NY; Chester, MA, 12 miles 7 miles wide (4 miles E and 3 miles W of centerline); Keene, NH; Concord, NH; Kennebunk, ME; INT Kennebunk 045° and Bangor, ME, 220° radials; Bangor; Princeton, ME; to INT Princeton 057° radial and the United States/Canadian border.

V–106 [Amended]

From Johnstown, PA; INT Johnstown 068° and Selinsgrove, PA, 259° radials; Selinsgrove; INT Selinsgrove 067° and Wilkes-Barre, PA, 237° radials; Wilkes-Barre; to INT Wilkes-Barre 037° and Sparta, NJ 300° radials. From Barnes, MA; Gardner, MA; Manchester, NH; to Kennebunk, ME.

V–126 [Amended]

From INT Peotone, IL, 053° and Knox, IN, 297° radials; INT Knox 297° and Goshen, IN, 270° radials; Goshen; Waterville, OH; Sandusky, OH; Dryer, OH; Jefferson, OH; Erie, PA; Bradford, PA; to Stonyfork, PA.

V–149 [Amended]

From Allentown, PA; INT Allentown 358° and Binghamton, NY 144° radials; to Binghamton.

V–153 [Removed]

V–408 [Amended]

From INT Martinsburg, WV, 058° and Modena, PA, 258° radials; Modena; Pottstown, PA; East Texas, PA; to Allentown, PA.

V–449 [Removed]

* * * * *

Paragraph 6011. United States Area Navigation Routes

T–212 RASHE, PA to Putnam, CT (PUT) [Amended]

RASHE, PA	FIX	(Lat. 40°40′36″ N., long. 077°38′39″ W.)
Selinsgrove, PA (SEG)	VORTAC	(Lat. 40°47′27″ N., long. 076°53′03″ W.)
DIANO, PA	FIX	(Lat. 41°00′02″ N., long. 076°13′34″ W.)
Wilkes Barre, PA (LVZ)	VORTAC	(Lat. 41°16′22″ N., long. 075°41′22″ W.)
LAAYK, PA	FIX	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
WEETS, NY	FIX	(Lat. 41°51′27″ N., long. 074°11′52″ W.)
NELIE, CT	FIX	(Lat. 41°56′28″ N., long. 072°41′19″ W.)
Putnam, CT (PUT)	VOR/DME	(Lat. 41°57′20″ N., long. 071°50′39″ W.)

T–216 Philipsburg, PA (PSB) to Nantucket, MA (ACK) [New]

Philipsburg, PA (PSB)	VORTAC	(Lat. 40°54′59″ N., long. 077°59′34″ W.)
Williamsport, PA (FQM)	VOR/DME	(Lat. 41°20′19″ N., long. 076°46′30″ W.)
ELEXY, PA	WP	(Lat. 41°25′54″ N., long. 076°07′35″ W.)
LAAYK, PA	FIX	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
HELON, NY	FIX	(Lat. 41°40′03″ N., long. 074°16′50″ W.)
Kingston, NY (IGN)	VOR/DME	(Lat. 41°39′56″ N., long. 073°49′20″ W.)
MOONI, CT	FIX	(Lat. 41°37′53″ N., long. 073°19′19″ W.)
Hartford, CT (HFD)	VOR/DME	(Lat. 41°38′28″ N., long. 072°32′51″ W.)
Groton, CT (GON)	VOR/DME	(Lat. 41°19′49″ N., long. 072°03′07″ W.)
Sandy Point, RI (SEY)	VOR/DME	(Lat. 41°10′03″ N., long. 071°34′34″ W.)
Nantucket, MA (ACK)	VOR/DME	(Lat. 41°16′55″ N., long. 070°01′36″ W.)

The airspace within R–4105 is excluded during times of use.

T–218 Stonyfork, PA (SFK) to Sparta, NJ (SAX) [New]

Stonyfork PA (SFK)	VOR/DME	(Lat. 41°41′43″ N., long. 077°25′12″ W.)
LAAYK, PA	FIX	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
Sparta, NJ (SAX)	VORTAC	(Lat. 41°04′03″ N., long. 074°32′18″ W.)

T–221 MAZIE, PA to Binghamton, NY (CFB) [New]

MAZIE PA	FIX	(Lat. 40°19′20″ N., long. 075°06′35″ W.)
Allentown, PA (FJC)	VORTAC	(Lat. 40°43′36″ N., long. 075°27′17″ W.)
LAAYK, PA	FIX	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
Binghamton, NY (CFB)	VORTAC	(Lat. 42°09′27″ N., long. 076°08′11″ W.)

T–291 LOUIE, MD to Albany, NY (ALB) [Amended]

LOUIE, MD	FIX	(Lat. 38°36′44″ N., long. 076°18′04″ W.)
BAABS, MD	WP	(Lat. 39°19′51″ N., long. 076°24′41″ W.)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08″ N., long. 077°04′10″ W.)
Selinsgrove, PA (SEG)	VORTAC	(Lat. 40°47′27″ N., long. 076°53′03″ W.)
Milton, PA (MIP)	VORTAC	(Lat. 41°01′24″ N., long. 076°39′55″ W.)
MEGSS, PA	FIX	(Lat. 41°11′13″ N., long. 076°12′41″ W.)
LAAYK, PA	FIX	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
Delancey, NY (DNY)	VOR/DME	(Lat. 42°10′42″ N., long. 074°57′25″ W.)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50″ N., long. 073°48′11″ W.)

T–295 LOUIE, MD to Princeton, ME (PNN) [Amended]

LOUIE, MD	FIX	(Lat. 38°36′44″ N., long. 076°18′04″ W.)
BAABS, MD	WP	(Lat. 39°19′51″ N., long. 076°24′41″ W.)
Lancaster, PA (LRP)	VORTAC	(Lat. 40°07′12″ N., long. 076°17′29″ W.)
Wilkes-Barre, PA (LVZ)	VORTAC	(Lat. 41°16′22″ N., long. 075°41′22″ W.)
LAAYK, PA	FIX	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
SAGES, NY	FIX	(Lat. 42°02′46″ N., long. 074°19′10″ W.)
SASHA, MA	FIX	(Lat. 42°07′59″ N., long. 073°08′55″ W.)
Keene, NH (EEN)	VORTAC	(Lat. 42°47′39″ N., long. 072°17′30″ W.)
Concord, NH (CON)	VORTAC	(Lat. 43°13′11″ N., long. 071°34′32″ W.)
Kennebunk, ME (ENE)	VOR/DME	(Lat. 43°25′32″ N., long. 070°36′49″ W.)
BRNNS, ME	FIX	(Lat. 43°54′09″ N., long. 069°56′43″ W.)
Bangor, ME (BGR)	VORTAC	(Lat. 44°50′30″ N., long. 068°52′26″ W.)
Princeton, ME (PNN)	VOR/DME	(Lat. 45°19′45″ N., long. 067°42′15″ W.)

Issued in Washington, DC, on August 21, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–21009 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0555]

RIN 1625–AA00

Safety Zone; TriRock San Diego, San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon the navigable waters of the San Diego Bay, San Diego, CA, in support of a triathlon bay swim. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 6:30 a.m. to 9:30 a.m. on September 22, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0555]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistical details of the San Diego Bay triathlon swim were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is impractical and contrary to the public interest. The Coast Guard did not have the necessary event information in time to provide both a comment period and allow for a 30 day delayed effective date. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is establishing a temporary safety zone on the navigable waters of San Diego Bay for a swim event.

The safety zone will be enforced from 6:30 a.m. to 9:30 a.m. on September 22, 2013. The limits of the safety zone will be navigable waters of the San Diego Bay in the vicinity of the San Diego Convention Center bound by the following coordinates including the marina: 32°42′16 N, 117°09′58″ W to 32°42′15″ N, 117°10′02″ W then south to 32°42′00″ N, 117°09′45″ W to 32°42′03″ N, 117°09′40″ W.

This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

C. Discussion of the Final Rule

This safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear during the bay swim. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zone.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the Captain of the Port of the designated representative. Immediately before and during the fireworks display, Coast Guard Sector San Diego Joint Harbor Operations Center will issues Broadcast Notice to Mariners on the location and enforcement of the safety zone.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels may be allowed to transit through the designated safety zone during specified times if they request and obtain authorization from the Captain of the Port, or his designated representative. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended,

requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the aforementioned portion of San Diego Bay from 6:30 a.m. to 9:30 a.m. on September 22, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will only be in effect for three hours early in the morning when vessel traffic is low. Vessel traffic can transit safely around the zone.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–591 to read as follows:

§ 165.T11–591 Safety Zone; TriRock San Diego, San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone will be navigable waters of the San Diego Bay behind the San Diego Convention Center bound by the following coordinates including the marina: 32°42′16″ N, 117°09′58″ W to 32°42′15″ N, 117°10′02″ W then south to 32°42′00″ N, 117°09′45″ W to 32°42′03″ N, 117°09′40″ W.

(b) *Enforcement Period.* This safety zone will be enforced from 6:30 a.m. to 9:30 a.m. on September 22, 2013.

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

(d) *Regulations.* (1) Entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

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

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: August 15, 2013.

S.M. Mahoney,

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

[FR Doc. 2013–21062 Filed 8–28–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0476]

RIN 1625–AA00

Safety Zone; San Diego Bayfair; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon the navigable waters of Mission Bay in San Diego, CA for the annual San Diego Bayfair power boat races from September 13, 2013 to September 15, 2013. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 7 a.m. to 5:30 p.m. on September 13, 2013 to September 15, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0476]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant John Bannon, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7261, email *John.E.Bannon@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule after publishing a Notice of Proposed Rulemaking (NPRM) on July 15, 2013 (78 FR 42027). The Coast Guard received no comments on the NPRM and as such, no changes have been made to this safety zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is impracticable and contrary to the public interest. The Coast Guard did not have the necessary event information about this boat race in time to provide both a comment period and allow for a 30 day delayed effective date. The Coast Guard was able to take comments on this safety zone prior to publication and enforcement. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay for the 2013 San Diego Bayfair power boat races. This event will occur between 7 a.m. and 5:30 p.m. on September 13 to September 15, 2013.

The safety zone includes the waters of Mission Bay bound by the following coordinates:

32°47′32″ N, 117°13′25″ W to 32°47′32″ N, 117°13′00″ W to 32°47′ 20″ N, 117°13′00″ W then west to 32°46′45″ N, 117°14′09″ W to 32°46′ 11″ N, 117°14′01″ W.

This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received 0 comments on the NPRM for this rule, and as such, no changes have been made to the final rule.

The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay for the 2013 San Diego Bayfair power boat races. This event will occur between 7 a.m. and 5:30 p.m. on September 13, 2013 to September 15, 2013. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The temporary safety zone includes a portion of the navigable waters of Mission Bay.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zone. Immediately before and during the event, Coast Guard Sector San Diego Joint Harbor Operations

Center will issue a Broad cast Notice to mariners on the location and enforcement of the safety zone.

Vessels will be able to transit the surrounding area and may be authorize to transit through the safety zone with the permission of the Captain of the Port or the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size and location of the safety zone. The safety zone is relatively small in size, an annual occurrence and traffic can circumvent the racing location. Persons and vessels would be prohibited from entering into, transiting through or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

2. Impact on Small Entities

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

(1) This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the waters of Mission Bay in San Diego, California from 7 a.m. to 5:30 p.m. on September 13, 2013 to September 15, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to a main portion of the navigable waters of Mission Bay, traffic would be allowed to pass through the safety zone with the permission of the Coast Guard patrol commander and the safety zone will collapse once the last races have concluded. Before the effective period, the Coast Guard will publish a Local Notice to Mariners.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–586 to read as follows:

§ 165.T11–586 Safety Zone; San Diego Bayfair; Mission Bay, San Diego, CA.

(a) *Location.* This temporary safety zone includes the waters of Mission Bay bound by the following coordinates: 32°47′32″ N, 117°13′25″ W to 32°47′32″ N, 117°13′00″ W to 32°47′ 20″ N, 117°13′00″ W then west to 32°46′45″ N, 117°14′09″ W to 32°46′ 11″ N, 117°14′01″ W.

(b) *Enforcement Period.* This section will be enforced from 7 a.m. to 5:30 p.m. on September 13, 2013 to September 15, 2013. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM). If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners can request permission to transit through the safety zone from the Patrol Commander. The Patrol Commander can be contacted on VHF–FM channels 16 and 22A.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

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

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: August 15, 2013.

J. A. Janszen,

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

[FR Doc. 2013–21063 Filed 8–28–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2013–0482; FRL–9900–41–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri; St. Louis Area Transportation Conformity Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Missouri State Implementation Plan (SIP) submitted March 22, 2011. This revision does not add any additional requirements to the existing rule but amends the rule by adding language that better clarifies specific roles and responsibilities to the interagency consultation process requirements. The revisions to Missouri's rule do not have an adverse affect on air quality. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective October 28, 2013, without further notice, unless EPA receives adverse comment by September 30, 2013. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0482, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: brown.steven@epa.gov.*

3. *Mail or Hand Delivery:* Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2013–0482. 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 through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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, i.e., 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 form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Steven Brown at (913) 551–7718, or by email at *brown.Steven@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

EPA is approving revisions to the Missouri SIP submitted to EPA on March 22, 2011. These revisions to the rule do not add any additional requirements to the existing rule but merely add language that better clarifies specific roles and responsibilities including the consultation groups' processes. EPA has conducted an analysis of the State's amendments and has concluded that these revisions do not adversely affect the stringency of the SIP. Missouri's revisions include amendments to sections (1) through (4) of rule 10 CSR 10–5.480 *St. Louis Area Transportation Conformity Requirements*, which updates the rule to provide more specificity to the interagency consultation process requirements, including roles and responsibilities. Section (1) revises language to include requirements of three sections from the federal conformity rule: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), 40 CFR 93.125(c).

Section (2) adds language that describes in detail which agencies embody the interagency consultation group and defines who appoints air quality agency representatives. Section (3) revises the language to describe in detail roles and responsibilities of each agency involved in the interagency consultation group, communication strategy procedures, specific conformity processes and procedures, conflict resolution procedures, and public participation process procedures. Section (4) makes minor administrative revisions to correct spelling.

II. Have the requirements for approval of a SIP revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is taking direct final action to amend the Missouri SIP by approving the State's request to amend 10 CSR 10–5.480 *St. Louis Area Transportation Conformity Requirements*. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

We are processing this action as a direct final action because the revisions do not adversely impact air emissions, and we do not anticipate any adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 1, 2013.

Mark Hague,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–5.480 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.480	St. Louis Area Transportation Conformity Requirements.	02/28/11	8/29/13 [*insert Federal Register page number where the document begins*].	
*	*	*	*	*

* * * * *

[FR Doc. 2013–20914 Filed 8–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0790; FRL–9842–4]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on November 9, 2012 and concerns oxides of nitrogen (NO_X) emissions from biomass boilers. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on September 30, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0790 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. Proposed Action

On November 9, 2012 (77 FR 67322), EPA proposed to approve the following rule into the SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
PCAPCD	233	Biomass Boilers	06/14/12	09/21/12

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP. Final approval of this rule satisfies California's obligation to implement RACT under CAA section 182 for this source category and terminates both the sanctions clocks and the Federal Implementation Plan (FIP) clock associated with our limited approval and limited disapproval of an earlier version of this rule. (77 FR 2643, January 19, 2012).

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 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 disproportionate human health or environmental effects with practical, appropriate, 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).

List of Subjects in 40 CFR Part 52

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

Dated: July 22, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(423)(i)(A)(*7*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(423) * * *

(i) * * *

(A) * * *

(*7*) Rule 233, "Biomass Boilers," amended on June 14, 2012.

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[FR Doc. 2013–20919 Filed 8–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0935; FRL– 9900–31–Region4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a full approval of the regional haze state implementation plan (SIP) from the State of Florida, submitted through the Florida Department of Environmental Protection (FDEP), on March 19, 2010, as amended on August 31, 2010, and September 17, 2012. Florida's SIP submittal addresses regional haze for the first implementation period. Specifically, this SIP submittal addresses the requirements of the Clean Air Act (CAA or "the 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 from numerous sources located over a wide geographic area (also referred to 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. In this action, EPA finds that Florida's regional haze SIP meets all of the regional haze requirements of the CAA. Thus, EPA is finalizing a full approval of Florida's entire regional haze SIP.

DATES: *Effective Date:* This rule will be effective September 30, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0935. 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 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. 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: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What is the background for this final action

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), ammonia (NH_3), and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution." On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment." *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), commonly referred to as the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations by adding provisions addressing regional haze impairment and establishing 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 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. 40 CFR 51.308(b) required states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007. Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Federal Class I areas. These implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install Best Available Retrofit Technology (BART) controls for the purpose of eliminating or reducing visibility impairment.

On March 19, 2010, and August 31, 2010, FDEP submitted and subsequently amended Florida's SIP to address regional haze in Florida and other states' Class I areas. On May 25, 2012, EPA published an action proposing a limited approval of Florida's regional haze SIP to address the first implementation period for regional haze.[1] *See* 77 FR 31240. EPA's May 25, 2012, proposed rulemaking covered Florida's March 19, 2010, SIP submittal, as amended on August 31, 2010, as well as the State's April 13, 2012, draft amendment to the regional haze SIP submission. In a July 31, 2012, draft amendment to the regional haze SIP submission, Florida addressed the 18 reasonable progress units and 11 facilities with BART-eligible electric generating units (EGUs) subject to EPA's Clean Air Interstate Rule (CAIR[2]) (a total of 20 EGUs) that were not covered by Florida's April 13, 2012, draft amendment to the regional haze SIP submission. It also amended the SIP submission to remove Florida's reliance on CAIR to satisfy BART and reasonable progress requirements for the State's affected EGUs.

Florida's September 17, 2012, final amendment to the regional haze SIP

[1] In a separate action published on December 30, 2011 (76 FR 82219), EPA proposed a limited disapproval of the Florida regional haze SIP, and on June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of the regional haze SIPs for several states, but deferred final action on the Florida regional haze SIP.

[2] On March 10, 2005, EPA issued CAIR, a rule which covers 27 eastern states and the District of Columbia. The rule uses a cap and trade system to reduce SO_2 and NO_X from power plant emissions. For more information, go to: *http://www.epa.gov/airmarkets/resource/cair-resource.html.*

submission consolidated its draft April 13, 2012, and draft July 31, 2012, amendments to the regional haze SIP submission into a single package. On October 15, 2012, and on May 2, 2013, FDEP submitted supplemental information and documentation for Progress Energy's Crystal River facility. On November 29, 2012 (77 FR 71111), EPA finalized a full approval of the BART determinations addressed in the Agency's May 25, 2012, proposed rulemaking action. These BART determinations were submitted to EPA for parallel processing on April 13, 2012, in a draft amendment to the regional haze SIP submission and submitted in final form on September 17, 2012.

On December 10, 2012 (77 FR 73369), EPA proposed several actions related to regional haze requirements for Florida. First, EPA proposed to approve certain BART and reasonable progress determinations included in Florida's September 17, 2012, amendment to the regional haze SIP submission. Second, EPA proposed to find that the September 17, 2012, amendment to Florida's regional haze SIP submission corrects the deficiencies that led to the aforementioned proposed limited approval and limited disapproval actions. Third, EPA proposed to withdraw the previously proposed limited disapproval of Florida's entire regional haze SIP, and alternatively proposed full approval of the entire regional haze SIP.

II. What action is EPA taking?

EPA is now finalizing full approval of all remaining portions of the Florida regional haze SIP as proposed on May 25, 2012, and December 10, 2012, including the remaining BART and reasonable progress determinations in Florida's September 17, 2012, amendment to the regional haze SIP submission (as supplemented on October 15, 2012, and May 2, 2013) [3] not previously addressed in EPA's November 29, 2012, final action.[4] EPA finds that Florida's September 17, 2012, amendment to the regional haze SIP submission (as supplemented on October 15, 2012, and May 2, 2013): (1) Replaces reliance on CAIR to satisfy the BART and reasonable progress requirements for its affected EGUs with case-by-case BART and reasonable progress control analyses; and (2) corrects the deficiencies that led to the December 30, 2011, proposed limited disapproval and the May 25, 2012, proposed limited approval of the State's regional haze SIP. Consequently, EPA finds that the regional haze SIP as a whole now meets the regional haze requirements of the CAA.

EPA received adverse comments on the May 25, 2012, proposed limited approval of Florida's regional haze SIP and on the December 10, 2012, proposed approval of certain BART and reasonable progress determinations. *See* Section III of this rulemaking for a summary of the comments received on EPA's May 25, 2012, and December 10, 2012, proposed actions and the Agency's responses to these comments. Detailed background information and EPA's rationale for the proposed actions are provided in EPA's May 25, 2012, and December 10, 2012, proposed rulemakings. *See* 77 FR 31240 and 77 FR 73369.

III. What is EPA's response to comments received on these actions?

EPA received two sets of comments on its May 25, 2012, rulemaking proposing a limited approval of Florida's regional haze SIP submittals and seven sets of comments on its December 10, 2012, proposed approval described above. Specifically, the comments on the May 25, 2012, proposed rulemaking were received from the Sierra Club and National Parks Conservation Association, collectively, and from the Florida Electric Power Coordinating Group, Inc.-Environment Committee. One comment related to BART was addressed in the Agency's November 29, 2012, final rulemaking. The remaining comments are addressed in this action. The seven sets of comments relating to the December 10, 2012, proposed rulemaking were received from Sierra Club, EarthJustice, and the National Parks Conservation Association, collectively; National Park Service (NPS); Florida Electric Power Coordinating Group, Inc. -Environment Committee; FPL Company; Progress Energy; Utility Air Regulatory Group; and numerous individual members of the Sierra Club. The complete comments provided by all of the aforementioned entities (hereinafter referred to as "the Commenter") are provided in the docket for today's final action (Docket Identification No. EPA–R04–OAR–2010–0935). A summary of the comments and EPA's responses are provided below.

A. Response to Comments on the May 25, 2012, Proposal

Comment 1: The Commenter concludes that EPA cannot approve Florida's reasonable progress demonstration or long-term strategy (LTS) at this time because "relevant portions of the SIP are incomplete in important regards" and because the components of the SIP are "interdependent" (i.e., regional haze SIPs are "comprehensive documents which fully address haze through linked reasonable progress goals, an effective long-term strategy, BART requirements for appropriate sources, and robust monitoring, amongst other requirements"). The Commenter believes that EPA cannot approve the reasonable progress demonstration or LTS "because the shift from CAIR to CSAPR [Cross State Air Pollution Rule] has fundamentally altered the SIP, and has required Florida to reanalyze significant portions of its SIP." The Commenter states that until such an analysis is complete, the SIP is missing critically important components. According to the Commenter, EPA cannot lawfully or rationally approve SIP provisions that rely on future revisions that Florida has not yet adopted or submitted to EPA or rely on CAIR to meet specific regional haze requirements when EPA has already "taken action to disapprove that exact action." Without a complete reasonable progress demonstration, LTS, and supporting analyses, the Commenter believes that EPA approval of such SIP sections would be arbitrary and contrary to law.

[3] On October 15, 2012, and on May 2, 2013, FDEP submitted supplemental information and documentation for Progress Energy's Crystal River facility. Additionally, FDEP submitted a letter to EPA dated July 30, 2013, in which it committed to provide EPA with a regional haze SIP revision no later than March 19, 2015, the deadline for the State's five-year regional haze periodic progress report, that will include a NOx BART emissions limit for Unit 1 reflecting best operating practices for good combustion.

[4] Specifically, the BART determinations addressed by the November 29, 2012, action were: Tampa Electric Company-Big Bend Station (Units 1, 2, 3); City of Tallahassee-Purdom Generating Station (Unit 7); Florida Power & Light (FPL)-Port Everglades Power Plant (Units 3, 4); CEMEX; White Springs Agricultural Chemical-SR/SC Complex; City of Gainesville-Deerhaven Generating Station (Unit 3); City of Vero Beach-City of Vero Beach Municipal Utilities (Units 2, 3, 4); FPL-Putnam Power Plant (Units 3, 4, 5, 6, 7, 8, 9, 10); Lake Worth Utilities-Tom G. Smith (Units 6, 9); City of Tallahassee-Arvah B. Hopkins Generating Station (Unit 4); FPL-Riviera Power Plant (Unit 4); Florida Power Corp.-Bartow Plant (Unit 3); Lakeland Electric-Charles Larsen Memorial Power Plant (Unit 4); Ft. Pierce Utilities Authority-H D King Power Plant (Units 7, 8); FPL-Cape Canaveral Power Plant (Units 1, 2); Atlantic Sugar Association-Atlantic Sugar Mill; Buckeye Florida-Perry; ExxonMobil Production-St. Regis Treating Facility and Jay Gas Plant; IFF Chemical Holdings, Inc.; IMC Phosphates Company-South Pierce; International Paper Company-Pensacola Mill; Mosaic-Bartow; Mosaic-Green Bay Plant; Osceola Farms; Sugar Cane Growers Co-Op; U.S. Sugar Corp.-Clewiston Mill and Refinery; Solutia Inc., Sterling Fibers, Inc.; U.S. Sugar Corp.-Bryant Mill; IMC Phosphates Company-Port Sutton Terminal; Georgia Pacific-Palatka; Smurfit-Stone-Fernandina Beach; Smurfit-Stone-Panama City; Mosaic-New Wales; Mosaic-Riverview; and CF Industries.

Response 1: EPA disagrees with the Commenter's conclusions and is approving the reasonable progress demonstrations, reasonable progress goals (RPGs), and LTS set forth in Florida's regional haze SIP. The State has submitted a complete regional haze SIP that satisfies all CAA requirements, and EPA is taking final action today to approve Florida's entire regional haze SIP. When combined with EPA's November 29, 2012, final rulemaking approving several BART determinations, there are no outstanding regional haze SIP elements requiring action.

Regarding the comments on the relationship between CAIR and the regional haze SIP, Florida set its RPGs based on modeled projections of future conditions that were developed using the best available information at the time the modeling analysis was performed. Given the requirement in 40 CFR 51.308(d)(1)(vi) that states must take into account the visibility improvement that is expected to result from the implementation of other CAA requirements, Florida set its RPGs based, in part, on the emissions reductions expected to be achieved by CAIR and other measures being implemented across the southeast region as modeled for Florida by the Visibility Improvement State and Tribal Association of the Southeast (VISTAS).[5] Although Florida no longer relies on CAIR to satisfy regional haze requirements for any sources within the State, the underlying emissions inventories and projections of reductions from upwind states continue to include assumptions based on the implementation of CAIR. As CAIR has been remanded by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court), some of the assumptions underlying the development of this element of the RPGs may change. EPA has determined that this reliance on CAIR in upwind states in the underlying analysis does not require EPA to withhold full approval of Florida's regional haze SIP. The 2008 remand of CAIR was followed by a 2012 decision in *EME Homer City Generation, L.P.* v. *EPA* (hereafter referred to as *"EME Homer City"*), 696 F.3d 7 (D.C. Cir. 2012), *cert. granted* 570 U.S. (June 24, 2013) (No. 12–1182), to vacate CSAPR and keep CAIR in place pending the promulgation of a valid replacement rule. In this unique circumstance, EPA believes that full approval of the SIP submission is appropriate. To the extent that Florida is relying on emissions reductions associated with the implementation of CAIR in other states in its regional haze SIP, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be sufficiently permanent and enforceable for the first implementation period ending in 2018. EPA has been ordered by the court to develop a new rule and the opinion makes clear that after promulgating that new rule, EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit regional haze SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a Federal implementation plan, if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously. The Court's clear instruction to EPA that it must continue to administer CAIR until a "valid replacement" exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to eliminate significant downwind contributions. Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR to meet certain regional haze requirements. For these reasons also, EPA believes it is appropriate to allow Florida to rely on reductions associated with CAIR in other states as sufficiently permanent and enforceable pending a valid replacement rule for purposes such as evaluating RPGs in the regional haze program. Following promulgation of the replacement rule, EPA will review regional haze SIPs as appropriate to identify whether there are any issues that need to be addressed.

EPA believes the Commenter overstates the overarching nature of the changes due to the CAIR remand. Many of the emissions units subject to reasonable progress analysis either have already reduced SO_2 emissions or will be reducing SO_2 emissions in the near future. These reductions are the result of company decisions to shut-down or re-power certain units or to install new control equipment (e.g., scrubbers) in response to CAIR. Furthermore, Florida has reviewed the facilities subject to BART or reasonable progress analysis on a case-by-case basis and has developed BART or reasonable progress requirements for the sources for which additional controls were appropriate. EPA expects these BART and reasonable progress requirements to provide benefits similar to or greater than those provided by CAIR. In fact, as Florida notes in its September 17, 2012, SIP amendment, EGU emissions in 2010 were already lower than the projected emissions for 2018 used in the State's RPG analysis. In addition, unlike the enforceable emissions limitations and other enforceable measures in the LTS, RPGs are not directly enforceable. *See* 64 FR 35733; 40 CFR 51.308(d)(1)(v). Because the projected SO_2 emissions reductions are sufficient to meet the RPGs, and because actual emissions in 2010 have been shown to be lower than projected emissions for 2018, EPA is approving Florida's RPGs and LTS.

As noted in the May 25, 2012, proposal, EPA believes that the five-year progress report is the appropriate time to address any changes, if necessary, to the RPG demonstration and/or the LTS. EPA expects that this demonstration will address the impacts on the RPGs of any needed adjustments to the projected 2018 emissions due to updated information on the emissions for EGUs and other sources and source categories. If this assessment determines that an adjustment to Florida's regional haze SIP is necessary, EPA regulations require a SIP revision within a year of the five-year progress report. *See* 40 CFR 51.308(h)(4).

Comment 2: The Commenter contends that EPA cannot approve Florida's RPGs in a manner consistent with the Administrative Procedure Act (APA) because the Agency did not specifically state that it was proposing to approve the RPGs in the May 25, 2012, action.

Response 2: EPA disagrees with the Commenter that the public was not provided adequate notice that the Agency was proposing approval of the RPGs included in Florida's regional haze SIP and that the public did not have a meaningful opportunity to comment on such a proposed approval. In the May 25, 2012, proposed rulemaking, EPA explicitly and

[5] The VISTAS Regional Planning Organization (RPO) is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

repeatedly stated that it proposed to grant limited approval to the State's March 19, 2010, August 31, 2010, and April 13, 2012, regional haze SIP submittals.[6] *See, e.g.,* 77 FR 31242, 31261. EPA described the content of these submittals in the action and included them in the docket. For example, in Section V.7 (77 FR 31259), entitled "RPGs," EPA discussed the RPGs included in Florida's SIP subject to the rulemaking action.

As stated in the May 25, 2012, action, a limited approval results in approval of the entire SIP with regards to regional haze, even of those parts that are deficient, preventing EPA from granting a full approval.[7] Because EPA identified the RPGs as part of Florida's regional haze SIP and stated that its proposed action would act as approval of Florida's entire regional haze SIP, the public was provided with adequate notice that EPA's action included approval of Florida's RPGs. Furthermore, in the December 10, 2012, action, EPA explicitly stated that it was proposing full approval of the entire regional haze SIP due to the changes made in Florida's September 17, 2012, final regional haze SIP amendment to address the deficiencies leading to the proposed limited approval and limited disapproval actions. It is not necessary or practical for EPA to single out every element of a SIP submission and expressly state that it is acting on each element when it proposes to act on the SIP submission as a whole. *See, e.g., Tucker* v. *Atwood,* 880 F.2d 1250, 1251 (11th Cir. 1989) (explaining that a rulemaking notice under Section 553(b) of the APA "requires no more than '. . . a description of the subjects and issues involved.' "); *Lloyd Noland Hosp. & Clinic* v. *Heckler,* 762 F.2d 1561, 1565 (11th Cir. 1985) (noting that a rulemaking notice "is adequate if 'it affords interested parties a reasonable opportunity to participate in the rulemaking process.' "); *Forester* v. *Consumer Prod. Safety Comm'n,* 559 F.2d 774, 787 (D.C. Cir. 1977) ("Section 553(b) does not require that interested parties be provided precise notice of each aspect of the regulations eventually adopted. Rather, notice is sufficient if it affords interested parties a reasonable opportunity to participate in the rulemaking process.").

EPA's proposal to approve the RPGs is also evident through language in Section V.7 of the May 25, 2012, action stating that the modeling supporting the analysis of these RPGs is consistent with EPA guidance prior to the CAIR remand and that the RPGs for the Class I areas in Florida are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. EPA also explained the requirements for a review of the reasonableness of this estimate as part of the mid-course review and notes that FDEP has committed to follow this process.

In addition, the proposed limited SIP disapproval for Florida and other states (December 30, 2011, 76 FR 82219) referenced in Section I of the May 25, 2012, proposal action (77 FR 31242) was explicit that EPA was not proposing to disapprove the RPGs for 2018 and that EPA believed that the five-year progress report was the appropriate time to address any changes to the RPG demonstration and, if necessary, the LTS. *See* 76 FR 82229. For all of the reasons discussed above, EPA's intention to approve the RPGs for Florida was clear, unambiguous, and consistent with the requirements of the APA.

Comment 3: The Commenter does not believe that EPA can approve Florida's RPGs because the State must re-evaluate its demonstration of reasonable progress based on concrete, definite reductions of visibility-impairing pollutants that result only from those programs and emissions limits that are legally in force. The Commenter states that there is no lawful or rational basis for assuming that the reasonable progress projected by Florida will occur because the State's RPGs rely on CAIR, "a temporary program due to the CAIR remand." The Commenter also asserts that Florida's RPGs should be disapproved because they "rely upon other control programs whose benefits are far from certain" (e.g., Atlanta/Birmingham/Northern Kentucky 1997 8-hour ozone nonattainment area SIP; consent decrees for Tampa Electric, Virginia Electric and Power Company, and Gulf Power-Plant Crist; Industrial Boiler Maximum Achievable Control Technology (MACT)). The Commenter also takes issue with EPA's assertion that Florida may address any discrepancies between projected emissions and actual reductions in the five-year progress report and contends that the five-year review of RPGs is not a lawful or rational basis for approving the SIP.

Response 3: The technical information provided in the docket demonstrates that the emissions inventory in the SIP adequately reflects projected 2018 conditions and should be approved. In addition, EPA does not believe that the State's reliance on CAIR in developing its RPGs affects EPA's ability to approve these RPGs for the reasons discussed in the response to Comment 1. EPA does not expect that the other inventory differences like those alleged, even if they occur, would affect the adequacy of Florida's regional haze SIP. The RPGs are based on emissions estimates and modeling conducted by VISTAS for its 10 member states, including Florida, which reflect Florida's best estimate of expected conditions in 2018 during the period that the initial March 19, 2010, regional haze SIP submittal was developed.

Florida's 2018 projections are based on the State's technical analysis of the anticipated emissions rates and level of activity for EGUs, other point sources, non-point sources, on-road sources, and off-road sources based on their emissions in the 2002 base year, considering growth and additional emissions controls to be in place and federally enforceable by 2018. The emissions inventory used in the regional haze technical analyses that was developed by VISTAS with assistance from Florida projected 2002 emissions (the latest region-wide inventory available at the time the SIP submittal was being developed) and applied reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility impairing pollutants NO_X, particulate matter (PM), and SO_2. It is expected that individual projections within a statewide inventory will vary from actual emissions over a 16-year period (i.e., 2002–2018 for the first implementation period). For example, some facilities shut down whereas others expand operations. Furthermore, economic projections and population changes used to estimate growth often differ from actual events; new rules are modified, changing their expected effectiveness; and methodologies to estimate emissions improve, modifying emissions estimates.

In the regional haze program, uncertainties associated with modeled emissions projections into the future are addressed through the requirement under the RHR to submit periodic progress reports in the form of a SIP revision. Specifically, 40 CFR 51.308(g) requires each state to submit a report every five years evaluating progress

[6] EPA also stated that it would address the 18 reasonable progress units and 11 facilities with BART-eligible EGUs subject to CAIR (a total of 20 EGUs) that were not covered by Florida's April 13, 2012, SIP submittal in a subsequent action. *See, e.g.,* 77 FR 31254, 31256.

[7] *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf* (see footnote 3, May 25, 2012, 77 FR 31242).

toward the RPGs for each mandatory Class I area located in the state and for each Class I area outside the state that may be affected by emissions from within the state. To minimize the differences between projected emissions and what will actually occur at the end of the implementation period, the RHR requires that the five-year review address any expected significant differences due to changed circumstances from the initial projected emissions, provide updated expectations regarding emissions for the implementation period, and evaluate the impact of these differences on RPGs.

The five-year review is a mechanism to assure that these expected differences between projected and actual emissions (in this case, for the year 2018) are considered and that their impact on the RPGs (in this case, for the year 2018) is evaluated. Despite the Commenter's claims to the contrary, the projections included in the SIP are still reasonably robust projections of emissions expected in 2018 and reflect a reasonable estimate of visibility conditions in 2018. EPA does not expect the five-year review will result in wholesale changes to emissions or visibility estimates and regards the regulatory process established in the RHR to be appropriate. The State's analysis of projected emissions and its reliance on these projections to establish its RPGs meets the requirements of the RHR and EPA guidance and adequately reflects the best estimate of expected ambient conditions in 2018.

Comment 4: The Commenter states that because the RPGs for Florida's Class I areas fail to meet uniform rate of progress (URP) projections for 2018 for two Class I areas, and "barely meet URP for others," the RPGs are arbitrary and unlawful. The Commenter believes that without CAIR, or any other comprehensive SO_2 control program, there is no rational basis for finding that Florida's RPGs and LTS will provide reasonable progress. The Commenter also states that Florida has not provided an explanation why it was reasonable for the State to fall short of the URP for the St. Marks Class I area (located in Florida) and the Okefenokee Class I area (located in Georgia) based upon the four reasonable progress factors and that EPA may not approve the RPGs until Florida provides such an explanation and has subjected it to notice and comment. The Commenter states that EPA and Florida lack factual support for the position that Florida is likely to do better than predicted once it makes final BART and reasonable progress determinations and that Florida's claims of progress illegally and irrationally rely on emissions reductions from the CAIR program. Even then, according to the Commenter, the plan fails to assure progress sufficient to achieve the URP at two Class I areas and just barely provides for such progress at others.

Response 4: As stated in the proposal, the RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for "reasonable progress" toward achieving natural (i.e., "background") visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the first implementation period of the SIP and ensure no degradation in visibility for the least impaired days over the same period. States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have flexibility in how they take these factors into consideration.

Florida followed EPA guidance and the RHR in preparing its RPGs. The State projects that it will meet the URP at two of its Federal Class I areas and falls just 0.03 deciview (dv) short of the URP at St. Marks. Florida stated in its September 12, 2012, SIP submittal that many of the sources that were projected to reduce emissions due to CAIR have shut down or re-powered (providing greater reductions than projected from emissions controls). The State's SIP submittal also notes that the projected reductions from the Industrial Boiler MACT Rule and EPA's Utility Mercury and Air Toxics Standards (MATS) Rule appear to be providing greater SO_2 reductions than expected when they were evaluated and modeled for reasonable progress. With regard to Florida's assessment of CAIR sources, Florida has reviewed all the facilities subject to BART or reasonable progress analysis on a case-by-case basis and determined BART or reasonable progress requirements for the remaining sources for which additional controls were appropriate.

EPA expects these BART and reasonable progress requirements to provide similar or greater benefits than CAIR. As noted in the September 17, 2012, Florida SIP submittal, emissions from Florida EGUs in 2010 were already below the emissions levels projected for 2018 without these additional BART limitations. As Florida stated on page 174 in its September 2012, SIP submittal, "[t]hese modeling results were used to set the reasonable progress goals. Because not all expected reductions were included in the final modeling runs (due to timing of the runs to be complete in time for SIP submittals), reductions will likely be greater when all BART reductions and reasonable measures are taken into account." In summary, Florida believes that the RPGs remain valid and that no further assessment is necessary for this first implementation period and EPA agrees with this assessment.

In addition, while SO_2 reductions due to the original Industrial Boiler MACT Rule are included in the 2018 emissions projection, the revised Industrial Boiler MACT Rule is expected to result in even greater emissions reductions than those reductions previously accounted for and evaluated as part of the 2018 projections presented in the submittal. In summary, although the sources and control strategies evaluated as part of the VISTAS process result in a RPG that is 0.03 dv less than the URP projection, Florida asserts, and EPA agrees, that the emissions reductions resulting from existing regulations, plus additional reductions from the newly-promulgated Industrial Boiler MACT, will result in "reasonable progress" that meets or exceeds the URP in all of the Florida Class I areas.

Comment 5: The Commenter contends that Florida must "go beyond the uniform rate of progress analysis to evaluate whether greater progress than the uniform rate is reasonable" and that the SIP is deficient because the State has not provided such an evaluation.

Response 5: EPA affirmed in the RHR that the URP is not a "presumptive target." Rather, it is an analytical requirement for setting RPGs. *See* 64 FR 35731–32. If a state sets an RPG that provides a slower rate of visibility improvement than the URP, a state must demonstrate that the RPG is nonetheless reasonable and that it is unreasonable to meet the URP for the Class I area at issue. 40 CFR 51.308(d)(1)(ii). The RHR does not require a state to evaluate whether it would be reasonable to set a RPG that would achieve greater visibility improvement than the URP. In determining RPGs for Florida's Class I areas, the State identified sources eligible for a reasonable progress control evaluation using certain selection criteria (also described in response to Comment 6 and at 77 FR 31251) and described those evaluations in its SIP.

Florida performed this reasonable progress evaluation in accordance with EPA regulations and guidance.

Comment 6: The Commenter states that Florida's identification of sources to assess for reasonable progress is flawed and cannot be approved by EPA because the State selected sources for reasonable progress control based upon its assumption that CAIR would maintain reasonable progress towards visibility goals during the first implementation period (i.e., the Commenter believes that the State relied on CAIR to reduce the number of sources evaluated for reasonable progress controls). The Commenter also states that because Florida expected "visibility in Class I areas to improve at or very near the nominal straight line path to the 2064 goal" based on this assumption, it selected a ratio of source emissions ("Q") divided by distance from a Class I area ("d") of 50 as the threshold for reasonable progress evaluation (five times the nominal significance criteria) and that Florida narrowed the field further by eliminating units that emit less than 250 tons per year of SO_2 and are more than 300 kilometers (km) from a Class I area, "leaving 16 of these very large sources unconsidered for RP controls." The Commenter states that Florida's approach, in CAIR's absence, now falls "well short of the [RHR's] mandate that the state 'consider major and minor stationary sources, mobile sources, and area sources' as it develops emissions limitations" and to include all "measures necessary to achieve the RPGs." The Commenter does not believe that EPA can approve Florida's approach unless the State can demonstrate that its methodology is warranted even in CAIR's absence and that, without CAIR in place, Florida acted arbitrarily in increasing the nominal significance criteria.

According to the Commenter, the State must revise its Q/d threshold for its BART exemption modeling to "rationally identify those sources which may cause or contribute to visibility impairment in one or more Class I areas."[8] The Commenter also believes that Florida's approach was flawed because it was based solely on SO_2 emissions; the State's LTS should have also considered reducing NO_X and NH_3 emissions; sulfate emissions account for only 30–60 percent of the impairment at the Everglades Class I area; and Florida excluded all sources that commenced construction or submitted a complete application after August 30, 1999, from its reasonable progress review. Therefore, the Commenter believes that Florida arbitrarily ignored a large percentage of sources that emit visibility impairing pollutants.

Response 6: States are required to consider the improvement expected from existing CAA programs (such as CAIR for affected states) in setting their RPGs. Thus, Florida appropriately factored in the expected emissions reductions and resulting visibility improvement from the implementation of CAIR in setting its RPGs. However, the identification of the major sources in Florida contributing to visibility impairment and the necessary emissions reductions from these sources was not winnowed because of CAIR. As discussed below, Florida established and applied certain criteria to identify for a reasonable progress control evaluation the largest known sources of SO_2 having the potential to impair visibility in Class I areas. The Florida LTS was developed by the State, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emissions units within Florida and in surrounding states that likely have the largest impacts currently on visibility at the State's Class I areas; (2) estimation of emissions reductions for 2018 based on all controls required or expected under Federal and state regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the URP for the State's Class I areas; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emissions units to determine if additional controls were reasonable.

As discussed in EPA's May 25, 2012, proposal, Florida's assessment concluded that ammonium sulfate is the largest contributor to visibility impairment at the State's Class I areas as a whole. *See* 77 FR 31250. For the Chassahowitzka and St. Marks Class I areas, these ammonium sulfate particles, resulting from SO_2 emissions, contribute roughly 71 percent of the calculated light extinction on the haziest days, and in Everglades National Park, the ammonium sulfate contribution was 40 percent of the calculated light extinction on the haziest days (due to a greater relative influence from organic carbon). Visibility impairment at Everglades National Park is occasionally dominated by organic carbon emissions due to lower SO_2 emissions in South Florida and the park's greater distance from large continental SO_2 emissions sources. However, controlling anthropogenic carbon emissions sources was determined not to be a viable strategy for improving visibility for the first implementation period because the organic carbon emissions are primarily biogenic in origin. Therefore, reduction of SO_2 emissions would be the most effective means of reducing visibility impairment at Florida's Class I areas. Because over 85 percent of 2002 SO_2 emissions in Florida were attributable to EGUs and industrial point sources, EPA considers Florida's decision to focus on SO_2 emissions from these facilities as a reasonable application of EPA's *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program*[9] (EPA's Reasonable Progress Guidance).

The State then considered three variables that each play a strong role in determining the impact any source may have on a particular Class I area. The first variable is the amount of SO_2 emissions (the greater the emissions, the more likely a source may impact visibility); the second variable is distance to a Class I area (visibility impacts decrease as distance from a Class I area increases); and the third variable is frequency of winds (residence time) in the direction of the Class I area from the source (trajectory analysis). The VISTAS States considered a number of different combinations of these variables as a surrogate for visibility impact.

The Commenter raises concerns relating to the Q/d threshold for BART exemption modeling in Florida. To clarify, the State used the Q/d metric as a threshold to identify those sources of SO_2 subject to a reasonable progress control evaluation, not for BART evaluations. Florida chose to develop a reasonable progress source-selection metric based on Q/d that would be essentially equivalent to the VISTAS metric with several differences. Florida chose to use 2002 emissions for Q, instead of the 2018 projections that VISTAS used in its suggested methodology for determining sources subject to a reasonable progress evaluation developed by its member states. Because the Integrated Planning Model (IPM) projected conversion of virtually all of the oil-fired boilers in Florida to natural gas, using 2018 emissions estimates of SO_2 from these

[8] Florida only used a Q/d threshold to identify sources subject to a reasonable progress analysis. EPA has assumed that the Commenter intended to refer to the reasonable progress analysis rather than to "BART exemption modeling" and has responded accordingly.

[9] *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program*, July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 ("EPA's Reasonable Progress Guidance"), located at: *http://www.epa.gov/ttn/caaa/t1/memoranda/reasonable_progress_guid071307.pdf*,.

sources would have exempted these units from reasonable progress review. Thus, the approach Florida used was more likely to result in selection of certain larger SO_2 sources for reasonable progress control analysis.

As a general strategy, Florida did not want to base its selection of sources for a reasonable progress review on the IPM's prediction of how the CAIR market-based reductions will occur. Rather, Florida chose to use criteria that would include the known largest sources having the greatest potential to impair visibility and that would ensure that these sources are addressed through the reasonable progress process. Because the State was evaluating existing sources for additional control, rather than simply screening whether a proposed new facility warranted further evaluation, Florida chose a Q/d threshold equal to 50 rather than 10 to assure that many of the largest sources of SO_2 nearest the Class I areas were required to address reasonable progress, while smaller sources (not expected to provide significant, cost-effective reductions) were excluded. Similarly, Florida provided some bounds for the Q and d values. The State excluded small (< 250 tons per year) units because any reductions from theses sources would likely be small and not very cost-effective for the first implementation period. Also, Florida's decision to consider only sources within 300 km of a Class I area was consistent with the bounds used in the protocol developed by VISTAS, *Protocol for the Application of the CALPUFF Model for Analyses of Best Available Retrofit Technology (BART),*[10] dated December 22, 2005, for the BART-exemption analysis. Finally, Florida only considered sources that commenced construction or submitted a complete application prior to August 30, 1999. This date was chosen because, under Florida's permit review process, all permits issued after that date require that visibility specifically be addressed. Hence, it is unlikely that additional cost-effective controls would be identified.

EPA disagrees that Florida's Q/d threshold must be revised. The guidance referenced by the Commenter is not directly relevant to the process developed by Florida for screening sources for a reasonable progress analysis during the first implementation period.[11] This guidance, issued by the Federal Land Managers in 2010, refers to the initial screening test for new or modified sources subject to EPA's New Source Review (NSR) regulations to determine whether a visibility evaluation is necessary for these proposed new sources. This document is not part of the guidance developed by EPA or used by states to develop their long-term strategies for regional haze.

As noted in EPA's Reasonable Progress Guidance[12] and discussed further in EPA's May 25, 2012, proposal action on the Florida regional haze SIP (77 FR 31250), the RHR gives states wide latitude to determine additional control requirements, and there are many ways to approach identifying additional reasonable measures as long as the four statutory factors are considered. Florida explained that its intent in choosing a Q/d threshold of 50 was to assure that many of the largest sources of SO_2 that are closest to the Class I areas were required to address reasonable progress, while smaller sources (not expected to provide significant, cost-effective reductions in the first implementation period) were excluded. EPA finds this explanation to be reasonable. Florida also included a comparison between its methodology and the VISTAS methodology and demonstrated that the differences were minimal. For example, 15 units that were identified by the VISTAS methodology were exempted under Florida's method, but Florida also identified nine additional units for analysis that the VISTAS method would have excluded. Of the 15 units identified by the VISTAS methodology but excluded by the Florida methodology, nine have a Q/d of less than 17 and five others are BART-subject sources. EPA regards the Florida methodology as an acceptable approach for determining the sources that should be subject to a reasonable progress analysis for the first implementation period.

Comment 7: The Commenter contends that EPA cannot approve Florida's reasonable progress control determinations as proposed because the State's reasonable progress analysis relies on CAIR or CSAPR. The Commenter believes that trading programs such as CAIR and CSAPR are not reliable guarantors of emissions controls under the regional haze program (incorporating by reference its February 28, 2012, comments on EPA's proposed rule to find that CSAPR is better than BART). The Commenter also states that EPA's analysis and approval of CSAPR as being better than BART does not validate the use of the CSAPR for reasonable progress as a matter of course and that such a determination must be made on a state-by-state basis, upon consideration of whether CSAPR assures reasonable progress or if further controls are required. Additionally, the Commenter does not believe that CSAPR can assure reasonable progress because CSAPR controls only ozone season NO_X in Florida, while Florida has determined that the bulk of visibility impairment at its Class I areas is due to SO_2 emissions.

Response 7: EPA addressed the Commenter's February 28, 2012, comments on CSAPR in its June 7, 2012, better-than-BART action (77 FR 33642). Regarding the comments about a relationship between CAIR, CSAPR, and reasonable progress in Florida, see the response to Comment 1. EPA did not propose in its May 25, 2012, action, and is not approving in this action, a conclusion that no additional controls for EGUs in Florida beyond CAIR or CSAPR are reasonable in the first implementation period. The State performed source-by-source analyses of the SO_2 emissions control alternatives for the affected facilities and made case-by-case reasonable progress determinations for each of these sources. EPA is relying on these analyses to address reasonable progress requirements. The State has adequately justified focusing on SO_2 emissions for its reasonable progress demonstration, as discussed in the response to Comment 6, and did not consider additional NO_X reductions in its reasonable progress demonstration for this implementation period.

Comment 8: The Commenter does not believe that EPA can approve Florida's exemption of JEA Northside Unit 27 from a reasonable progress analysis on the grounds that it took permit limits in 2009 to limit its SO_2 emissions.[13] The Commenter believes that Florida's exclusion of this facility from a reasonable progress analysis is arbitrary and inconsistent with the RHR because visibility impacts are measured based on a one-hour averaging time and the Commenter does not believe that these federally enforceable limits ensure that short-term visibility impacts are not experienced in the Okefenokee Class I area. The Commenter states that these permit limits must be modified to provide for a one-hour averaging time unless there is a "reasoned and factually

[10] The 2005 VISTAS protocol is located at: *http://www.vistas-sesarm.org/BART/VISTASBARTModelingProtocol_Dec222005.pdf.*

[11] Federal Land Managers' Air Quality Related Values Work Group (FLAG), *Phase I Report—Revised (2010) http://nature.nps.gov/air/pubs/pdf/flag/FLAG_2010.pdf.*

[12] EPA's Reasonable Progress Guidance, page 4–2.

[13] The federally enforceable SO_2 emissions limitations are 0.2 pound per million British Thermal Units (lb/MMBtu) heat input, 24-hour average, and 0.15 lb/MMBtu heat input, 30-day rolling average.

supported explanation in the SIP as to why short-term visibility impacts will not occur despite the permit's relatively long averaging times."

Response 8: EPA disagrees with the Commenter's contention that the differences in averaging time identified in the comment should affect the Agency's findings and conclusions for Northside Unit 27." The reasonable progress evaluation is performed for the 20 percent best and worst days. While EPA does assess Interagency Monitoring of Protected Visual Environments ("IMPROVE") samples over a 24-hour time period (not hourly as stated by the Commenter), none of the visibility program requirements are based on these 24-hour peaks. Both the 20 percent best days and 20 percent worst days represent an average over one-fifth of monitored days of the year. Because this is a relatively long time period, it tends to "smooth out" any variations that would occur over a shorter time period. EPA finds no reason to believe that there is a need to address any potential short-term variations in emissions with a short-term emissions limit.

Comment 9: The Commenter does not believe that EPA's May 25, 2012, proposal states the Agency's intentions with sufficient clarity or that EPA can approve SIP components that it has not clearly proposed to approve in the notice. According to the Commenter, EPA has not met the APA's notice and comment provisions governing rulemaking requiring that an agency clearly state what it is proposing so that members of the public have adequate notice and can offer informed comment. The Commenter provides two examples of instances where it believes that EPA has not clearly stated whether it is proposing approval or disapproval of a particular SIP component (i.e., RPGs and the reasonable progress demonstration).

Response 9: As discussed in the response to Comment 2, EPA disagrees there was any ambiguity in its clearly stated intention in the May 25, 2012, proposed rulemaking action to grant limited approval to the March 19, 2010, August 31, 2010, and April 13, 2012, Florida regional haze SIP submittals and the Agency's position that the limited approval acted as approval of these SIP submittals in their entirety. EPA devoted significant text in the May 25, 2012, rulemaking notice to RPGs and the reasonable progress demonstrations, and included the three SIP submittals (subject to the proposed action) in the docket for public review. Because EPA identified the RPGs and reasonable progress demonstrations as part of the SIP, and stated that its proposed action would act as approval of the entire three regional haze SIP submittals, the public was provided with adequate notice that EPA's action included approval of Florida's RPGs and reasonable progress demonstrations. Furthermore, in the December 10, 2012, action, EPA explicitly stated that it was proposing full approval of the entire regional haze SIP due to the changes made in Florida's September 17, 2012, final regional haze SIP amendment to address the deficiencies leading to the proposed limited approval and limited disapproval actions.

It is not necessary or practical for EPA to single out every element of a SIP submittal and expressly state that it is acting on each element when it proposes to act on the SIP as a whole. *See, e.g., Tucker* v. *Atwood*, 880 F.2d at 1251 (explaining that a rulemaking action under Section 553(b) of the APA "requires no more than '. . . a description of the subjects and issues involved.' "); *Lloyd Noland Hosp. & Clinic* v. *Heckler*, 762 F.2d at 1565 (noting that a rulemaking notice "is adequate if 'it affords interested parties a reasonable opportunity to participate in the rulemaking process.' "); *Forester* v. *Consumer Prod. Safety Comm'n*, 559 F.2d at 787 ("Section 553(b) does not require that interested parties be provided precise notice of each aspect of the regulations eventually adopted. Rather, notice is sufficient if it affords interested parties a reasonable opportunity to participate in the rulemaking process.").

Comment 10: The Commenter believes that it is improper for EPA to withhold full approval of Florida's regional haze SIP because CAIR is still in effect.

Response 10: See the response to Comment 1. In this action, EPA is now fully approving Florida's regional haze SIP because the State has replaced its reliance on CAIR with source-specific emissions limitations to satisfy both the BART requirements and the requirement for a LTS sufficient to achieve the state-adopted RPGs.

B. Response to Comments on the December 10, 2012, Proposal

Lansing Smith

Comment 11: The Commenter contends that FDEP improperly rejected wet flue gas desulfurization (FGD) as BART for Units 1 and 2 at Lansing Smith. The Commenter states that it would be arbitrary and capricious for EPA to approve the BART determination because the analysis inflated the cost-effectiveness of wet FGD by using an emissions limit of 0.15 lb/MMBtu of SO_2 rather than the removal efficiency potential of 95 percent identified by Gulf Power and by not evaluating the most stringent control efficiency associated with wet FGD (asserted to be 98 percent or greater). The Commenter also states that wet FGD is cost-effective even using the "flawed" values provided in the SIP because Florida's values are "still easily within the range which EPA has already determined to be cost-effective elsewhere" and because they are lower than cost-effectiveness values associated with BART controls adopted by FDEP at FPL's Manatee power plant.

Response 11: In evaluating the statutory BART factors for FGD, FDEP most heavily weighed the lack of visibility improvement associated with this control technology for Lansing Smith, not the cost of control. States have the flexibility to determine the weight and significance of each factor. *See, e.g.*, 70 FR 39123, 39153, 39170 (July 6, 2005). As discussed in EPA's December 10, 2012, proposal, the model predicted limited visibility improvements considering both the absolute visibility benefits of FGD from the baseline as well as the incremental benefits from the use of FGD over dry sorbent injection (DSI). FDEP concluded that the predicted incremental improvements in visibility of 0.07 dv for Unit 1 and 0.09 dv for Unit 2 for the 98th percentile highest day over three years were not sufficient in light of the costs to warrant the selection of FGD as BART, regardless of whether FGD is cost-effective on a dollars per ton basis.

EPA agrees that if FDEP had assumed either a 95 percent or 98 percent removal efficiency for wet FGD, then Florida's cost-effectiveness values would have been slightly lower, while the modeled visibility improvement would have been slightly higher. As explained in EPA's BART Guidelines,[14] however, sources evaluating post-combustion SO_2 controls can consider a presumptive limit of either 95 percent control or 0.15 lb/MMBtu when performing a five-factor BART analysis.[15] Therefore, while FDEP could have used a higher removal efficiency in evaluating wet FGD, EPA believes that it was reasonable for FDEP to conduct its analysis using an emissions limit of 0.15 lb/MMBtu. Moreover, even had FDEP used a higher removal efficiency, the incremental visibility improvement expected from wet FGD over DSI would

[14] *Guidelines for BART Determinations Under the Regional Haze Rule ("BART Guidelines")*, 40 CFR part 51 Appendix Y.

[15] 40 CFR part 51 Appendix Y, IV.E.4.

not have increased sufficiently to render FDEP's conclusion unreasonable.

Comment 12: The Commenter states that the visibility benefits associated with wet FGD are significant and that it is therefore inappropriate for EPA to dismiss these improvements. The Commenter concludes that EPA has overemphasized the incremental visibility improvements between wet FGD and DSI rather than evaluating the overall improvement associated with wet FGD and that it is improper for EPA to disregard the incremental improvements on the basis that they are less than 0.5 dv. The Commenter also concludes that EPA must consider the visibility improvement from wet FGD in relation to the statutory goal of eliminating visibility impairment. According to the Commenter, the improvement associated with wet FGD is "significant" in light of the 0.244 dv annual rate of progress required to achieve the national goal at the St. Marks Class I area and because the State is "already falling short of the uniform rate of progress required to restore visibility by 2064" at this Class I area. The Commenter further states that it would be arbitrary and capricious for EPA to reject wet FGD based on incremental visibility values when the incremental benefits from wet FGD are greater than the incremental visibility improvement between DSI and the switch to lower sulfur coal.

Response 12: See the response to Comment 11. FDEP did not summarily disregard wet FGD using a 0.5 dv threshold. FDEP evaluated the visibility improvements associated with wet FGD for Lansing Smith under a five-factor BART analysis and concluded that these improvements were minimal and did not warrant the selection of wet FGD as BART for the facility. The State has flexibility to weigh the five factors. *See* 70 FR 39170 (July 6, 2005). As discussed in Florida's regional haze SIP, FDEP does not believe that St. Marks will fall short of the URP target in light of the additional BART and reasonable progress measures added to the regional haze SIP after the modeling of reasonable progress was conducted and the retirement and conversion to natural gas of several EGUs. Moreover, states need not consider the URP at a specific Class I area in determining whether the visibility benefits associated with a given control option warrant its selection as BART: The URP is a metric that states use in setting their RPGs. A state's RPGs, in turn, need not be met by requiring the most stringent control technology at a single source, but rather can be met with a variety of control options and strategies that apply to various sources throughout the state. Here, EPA concurs with FDEP's assessment that the incremental visibility improvements associated with wet FGD at Lansing Smith are insufficient to warrant the technology's selection as BART.

Comment 13: The Commenter argues that the energy and non-air quality issues cited by FDEP (e.g., four megawatt (MW) power penalty, generation of scrubber waste) are immaterial and not sufficient to reject wet FGD as BART.

Response 13: FDEP included an evaluation of the energy and non-air quality impacts associated with wet FGD for completeness because these impacts are, collectively, one of the five statutory factors to be considered in a BART determination. This factor was not determinative in this instance because FDEP concluded that the visibility impacts associated with wet FGD for Lansing Smith did not warrant selection of this control technology as BART for the facility.

Comment 14: The Commenter contends that FDEP improperly rejected dry FGD as BART for Units 1 and 2 because the State did not fully consider the technology or provide any evidence supporting its cost and control efficiency claims that a full analysis is not required based on FDEP's determination that dry FGD is more expensive than wet FGD and has the same or lower control efficiency. The Commenter asserts that dry FGD is technically feasible and can achieve control efficiencies of up to 98 percent removal. The Commenter also claims that it would be arbitrary and capricious for EPA to approve FDEP's rejection of dry FGD at Lansing Smith because the State approved the technology as BART at Crystal River.

Response 14: See the response to Comment 11. EPA's BART Guidelines provide that in identifying control options, states must identify the most stringent option and a reasonable set of options for analysis that reflects a comprehensive list of available technologies.[16] It is not necessary to list all permutations of available control levels that exist for a given technology. The BART Guidelines also state that a "possible outcome of the BART procedures discussed in these guidelines is the evaluation of multiple control technology alternatives which result in essentially equivalent emissions. It is not our intent to encourage evaluation of unnecessarily large numbers of control alternatives for every emissions unit. Consequently, you should use judgment in deciding on those alternatives for which you should conduct detailed impacts analyses. . . . For example, if two or more control techniques result in control levels that are essentially identical, considering the uncertainties of emissions factors and other parameters pertinent to estimating performance, you may evaluate only the less costly of these options."[17] EPA does not regard the differences in removal efficiency or cost between wet FGD and dry FGD to be sufficient in this instance to warrant an independent assessment of dry FGD as BART for Lansing Smith.

Comment 15: The Commenter believes that FDEP's use of a 0.15 lb/MMBtu emissions limit underestimates the visibility benefits from a FGD system because it is equivalent to 89 percent control. The Commenter alleges that a control efficiency of 95 percent or 98 percent is achievable.

Response 15: See response to Comment 11. Changing the SO_2 control rate to the level suggested by the Commenter would not sufficiently alter the results of the modeling analysis for Lansing Smith to change the conclusion reached by FDEP. Furthermore, FDEP appropriately modeled FGD assuming a maximum allowable emissions rate of 0.15 lb/MMBtu. The actual percent reduction associated with this limit varies depending on the sulfur content of the coal burned. Different assumptions regarding the sulfur content of future coal used would result in different estimates of the emissions rate. For example, although the 0.15 lb/MMBtu rate results in an approximately 89.5 percent reduction from baseline emissions on an annual basis, it results in 93 and 91.5 percent reductions at Units 1 and 2, respectively, on the maximum actual short-term (24-hour) basis used in the baseline visibility assessment. Finally, it is also important to note that the 0.15 lb/MMBtu limit also takes into account emissions from startup, shutdown, and malfunction because the BART limit must be met on a continuous basis.

Comment 16: The Commenter believes that FDEP underestimated the visibility improvement associated with wet FGD, thereby making it less cost-effective, by only estimating Lansing Smith's visibility impacts on St. Marks, the only Class I area within 300 km of the facility. The Commenter states that EPA must consider CALPUFF modeling results from Federal Class I areas

[16] 40 CFR part 51 Appendix Y, IV.D, n.12.

[17] 40 CFR part 51 Appendix Y, IV.D.2, item 5 under the heading "What type of demonstration is required if I conclude that an option is not technically feasible?"

beyond 300 km and the cumulative visibility impacts across these multiple areas. The Commenter cites to a May 2012 report entitled "Long Range Transport Models Using Tracer Field Experiment Data" in support of its position that changes to CALPUFF since the publication of the 1998 Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 guidance requires consideration of visibility impacts beyond 300 km. The Commenter also contends that a rough analysis based on the visibility impacts for St. Marks using linear and simple Gaussian dispersion assumptions reveals that the impacts at Class I areas other than St. Marks may be significant.

Response 16: As a general matter, EPA agrees that Florida should have considered the visibility improvements at all affected Class I areas in its BART visibility assessments. For the Lansing Smith BART analysis, Florida modeled visibility impacts at St. Marks, the only mandatory Class I Federal area within the surrounding 300 km CALPUFF modeling domain used by FDEP to assess visibility impacts. FDEP conducted the visibility modeling consistent with the modeling protocol that VISTAS developed for preparing BART analyses entitled *Protocol for the Application of the CALPUFF Model for Analyses of Best Available Retrofit Technology (BART).* (See appendix L of the Florida regional haze SIP submittal). This modeling protocol was developed in a transparent manner involving states, EPA, NPS, Fish & Wildlife Service (FWS), and any other interested entities that wished to participate in the public process. The protocol establishes 300 km as the boundary around a BART-subject source in which to model potential visibility impacts at Class I areas, and consistent with this protocol, FDEP modeled the highest visibility impact from the nearby Class I areas within a 300 km radius of the source. As noted above, there are no Class I areas other than the St. Marks area within the 300 km boundary around Lansing Smith's BART-subject units.

EPA disagrees with the Commenter's assertion that changes to CALPUFF now support modeling at distances greater than 300 km. The Commenter cited a May 2012 technical evaluation (*Documentation of the Evaluation of CALPUFF and Other Long Range Transport Models Using Tracer Field Experiment Data* [18]) that evaluates several long range transport models based on several tracer studies. The report cited by the Commenter does not refute the IWAQM Phase 2 report which states that "IWAQM recommends use of CALPUFF for transport distances of order 200 km and less. Use of CALPUFF for characterizing transport beyond 200 to 300 km should be done cautiously with an awareness of the likely problems involved." [19] In fact, the May 2012 report further "emphasizes the need for a standardized set of options for regulatory CALPUFF modeling." [20] Given these findings, EPA does not agree, as the Commenter asserts, that it must consider CALPUFF modeling results from Federal Class I areas beyond 300 km. EPA therefore believes that the results of CALPUFF modeling beyond 300 km of the source should be evaluated in light of the limitations discussed in the two guidance documents cited above.

Finally, as discussed in the response to Comment 11, FDEP concluded that the predicted incremental improvements in visibility of 0.07 dv for Unit 1 and 0.09 dv for Unit 2 for the 98th percentile day at St. Marks were not sufficient to warrant the selection of FGD as BART. The visibility improvements associated with FGD for the Class I areas outside of the 300 km area are expected to be even lower than those modeled for St. Marks. EPA does not believe that, even had impacts at Class I areas beyond 300 km been modeled, the visibility benefits of wet FGD across all Class I areas would be sufficient to make FDEP's SO_2 BART determination for Lansing Smith unreasonable. The Commenter estimates visibility impacts based on "linear and simple Gaussian dispersion assumptions," but did not provide any further information on how it developed these estimates or how EPA should consider them.

Comment 17: The Commenter states that EPA cannot approve the wet FGD BART analysis without further explanation from FDEP because Gulf Power provided emissions data for 2003–2005, while it modeled the visibility impacts of these emissions based on meteorological data from 2001–2003.

Response 17: FDEP chose 2001–2003 as its baseline period. It is not necessary to match the years of meteorology with the years of emissions in a BART analysis as long as both sets of data are representative. EPA guidance states that the "emissions estimates used in the models are intended to reflect steady-state operating conditions during periods of high capacity utilization." [21] Concerning the choice of an alternate period for the emissions data, EPA has reviewed the SO_2 emissions data for the Lansing Smith power plant in the EPA Clean Air Markets Division (CAMD) database [22] for the 2000–2005 period. EPA found that the 2002 SO_2 emissions from Lansing Smith were lower than the SO_2 emissions for any other year in this period and are not representative of steady-state operating conditions during periods of high capacity utilization. The SO_2 emissions from 2003–2005 appear to be the most representative three-year period in this time frame and EPA supports the State's use of this more representative data.

Comment 18: The Commenter states that EPA cannot approve FDEP's rejection of wet FGD as BART without a more thorough review of the cost analysis. According to the Commenter: (1) The analysis is based on un-sourced and potentially biased data from an entity within Gulf Power's parent company; (2) the data underlying the control effectiveness estimates is not publicly available; (3) the cost estimates likely do not follow the *EPA Air Pollution Control Cost Manual ("EPA Control Cost Manual")*; [23] and (4) the assumptions regarding a seven percent interest rate and 20-year scrubber lifetime are inappropriate.

Response 18: EPA reviewed the cost estimates provided by Gulf Power and found that they are consistent with those resulting from application of EPA's Control Cost Manual. Appendix I of the Florida regional haze SIP submittal describes how members of the public can obtain access to the data underlying the cost analysis. EPA believes that Florida has adequately addressed data access and that the State's cost analysis is consistent with the BART Guidelines. The seven percent interest rate used by FDEP is consistent with EPA's Control Cost Manual and guidelines issued by the Office of Management and Budget (Circular A–94). Furthermore, adjusting the scrubber lifetime from 20 to 30 years would affect the cost analysis only by approximately 10 to 11 percent. Decreasing the estimated cost of FGD by 10 percent would not make FDEP's conclusion that wet FGD is not SO_2 BART for Lansing Smith unreasonable given the minimal incremental visibility improvements associated with this technology at this facility.

Comment 19: The Commenter asserts that EPA cannot approve the PM BART

[18] *http://www.epa.gov/scram001/reports/EPA-454_R-12-003.pdf.*

[19] *http://www.epa.gov/scram001/7thconf/calpuff/phase2.pdf,* page 18.

[20] *http://www.epa.gov/scram001/reports/EPA-454_R-12-003.pdf,* page 10.

[21] 40 CFR part 51 Appendix Y, III.A.3, Option 1.

[22] *http://ampd.epa.gov/ampd/.*

[23] *http://www.epa.gov/ttncatc1/dir1/c_allchs.pdf.*

limit of 0.1 lb/MMBtu for Lansing Smith, which is the existing limit in the facility's title V permit, without considering lowering the limit to reflect the most stringent emissions control level that the facility's electrostatic precipitators (ESPs) are capable of achieving. The Commenter claims that it would be an arbitrary and capricious action for EPA to approve this limit as PM BART because the existing ESPs achieve emissions rates of 0.014 and 0.015 lb/MMBtu.

Response 19: In its BART analysis, FDEP evaluated actual PM emissions from Units 1 and 2 with current controls (high efficiency hot- and cold-side ESPs), the impact of these emissions on visibility at St. Marks, existing permit conditions, and the visibility improvement associated with reducing the PM limits beyond the facility's actual emissions. In assessing impacts due to PM emissions at St. Marks, FDEP reviewed historic PM emissions from Units 1 and 2 and established a baseline filterable PM_{10} emissions rate of 47.9 lb PM/hour, equal to approximately 0.025 lb/MMBtu for Unit 1 and 0.021 lb/MMBtu for Unit 2, derived from the highest stack test for the three-year period of 2003–2005 combined with maximum heat input. FDEP modeled visibility impairment using this baseline and calculated an impact at St. Marks due to PM emissions from Units 1 and 2 of approximately 0.02 dv, equal to 1.3 percent of the total baseline impact. FDEP also evaluated fabric filters as a possible BART control option, which would reduce PM emissions to a rate of 0.008 lb/MMBtu, and found that reducing PM emissions beyond the baseline emissions rate would result in a visibility improvement of 0.00 dv at St. Marks.

While the existing permit limit of 0.1 lb/MMBtu is above actual controlled emissions levels and FDEP arguably should have tightened the limit to reflect the capabilities of the existing ESPs, EPA believes that FDEP's decision not to tighten the limit was reasonable for several reasons. First, the impact of tightening Lansing Smith's PM emissions limit would be minimal from a visibility perspective. Second, Lansing Smith's current operating permit does not authorize the facility to increase PM emissions beyond the actual controlled levels when the facility installs DSI for SO_2 BART. EPA notes that Lansing Smith must submit a comparison of baseline actual emissions to future actual emissions once a final design is available for the installation of DSI at the facility. This comparison should be available in early 2015. At that time, FDEP will need to determine whether the installation of DSI will cause a significant increase in the facility's PM emissions, thereby triggering PSD review. Third, MATS was promulgated on April 24, 2013, (78 FR 24073) for existing sources and will further limit PM emissions from Units 1 and 2 to 0.03 lb/MMBtu by 2015. For these reasons, EPA believes that the existing permit limit of 0.1 lb/MMBtu for Units 1 and 2 at Lansing Smith is adequate for PM BART at this time. However, EPA expects FDEP to review the PM emissions limit in the next regional haze implementation period, at which time the PM impacts, if any, from the operation of DSI for SO_2 BART will be clear.

Comment 20: The Commenter claims that the modeling files have not been made available and that EPA cannot evaluate or approve the BART determinations for the Lansing Smith facility without this information. The Commenter requests that EPA obtain the modeling files, evaluate them for consistency with the BART Guidelines and Control Cost Manual, and provide them for public review and comment.

Response 20: Appendix I of the Florida regional haze SIP submittal describes how members of the public can obtain access to the modeling files. It also states that the raw meteorological, emissions, and air quality modeling input and output datasets will in many cases surpass any practical file size for online storage or downloading. EPA has accessed the data in this manner and reviewed the appropriate files. EPA believes that Florida has adequately addressed data access and that the State's visibility modeling for Lansing Smith is consistent with the BART Guidelines. The EPA Control Cost Manual is not relevant to visibility modeling.

Crystal River

Comment 21: The Commenter notes that under Option 1 (shutdown), the underlying BART analysis does not consider the use of DSI as an interim control for SO_2. The Commenter believes that an analysis of this control is required before EPA can approve the proposed BART determination.

Response 21: EPA has evaluated the cost-effectiveness of DSI under the shutdown option and concludes that, although FDEP should have evaluated DSI as a possible interim BART control option, DSI would not be cost-effective.[24] EPA estimates that DSI would result in approximately $46,000,000 in capital costs and $54,000,000 in annual operating costs at the Crystal River facility, not including expenses for any necessary upgrades to the ESPs due to the increased loading from the DSI system or the potential costs due to local retrofit constraints.[25] Allowing time for permit approvals, engineering, construction, and installation, and assuming that DSI could be fully operational by the end of 2017 under an expeditious schedule, DSI would be in operation for approximately three years before the units would be shut down at the end of 2020. At an expected control efficiency of 50 percent, EPA estimates that the annual SO_2 reduction would be 4,644 tons from Unit 1 and 5,912 tons from Unit 2 at a cost-effectiveness of $6,897/ton and $6,943/ton of SO_2 removed, respectively.[26] EPA also evaluated the cost-effectiveness of operating DSI for five years rather than three, but still found that the cost-effectiveness values would exceed $6,000/ton. Therefore, EPA concurs with FDEP's SO_2 BART determination for Crystal River because the cost-effectiveness of DSI is higher than what EPA or Florida has considered to be BART in other BART determinations selecting DSI.

Comment 22: The Commenter does not believe that EPA can approve Option 2 of the Crystal River BART determination because of alleged inadequacies in the BART analyses that resulted in BART determinations for SO_2, PM, and NO_X with emissions limits that were less stringent than the Commenter considered appropriate as BART for this facility.

Response 22: On May 2, 2013, FDEP supplemented Florida's regional haze SIP with an April 30, 2013, letter from Duke Energy (formerly known as Progress Energy) notifying FDEP of the Company's binding decision to pursue Option 1 under the Crystal River BART construction permit and shut down Units 1 and 2 by December 31, 2020. Pursuant to the construction permit, which was incorporated into Florida's regional haze SIP, Duke Energy's binding determination renders Option 2 and the corresponding permit provisions allowing for the implementation of Option 2 void. Today's final action approving Florida's regional haze SIP makes this shutdown

[24] EPA notes that although two Commenters submitted comments on the state rulemaking for this BART determination, neither identified DSI as an option for FDEP to consider in its BART analysis.

[25] IPM Model—Revisions to Cost and Performance for APC Technologies, Dry Sorbent Injection Cost Development Methodology, Sargent & Lundy LLC, August 2010. *http://www.epa.gov/airmarkets/progsregs/epa-ipm/docs/append5_4.pdf.*

[26] To view EPA's calculations to support these figures, please refer to "Crystal River DSI Cost Analysis" in the docket for this action.

requirement federally enforceable. Hence, EPA regards any comments on Option 2 to be moot.

Comment 23: The Commenter recommends that selective non-catalytic reduction (SNCR) be re-evaluated as an interim control under Option 1 based on its contention that the technology can be installed in much less than five years, thus improving its cost-effectiveness by increasing its useful life.

Response 23: EPA does not believe that SNCR would be cost-effective as an interim control on Units 1 and 2 given the remaining useful life of this facility. Although EPA disagrees with FDEP's conclusion that SNCR is not a demonstrated technology for boilers of this size, it does concur with FDEP that detailed engineering and site-specific assessments would be necessary to design and install SNCR given the nature of the units and that these assessments could take substantial additional time to complete. Compared with smaller coal-fired boilers, the engineering design for Units 1 and 2 would require consideration of the limited access to temperature regions in the boiler, greater variations in combustion temperatures, longer distances over which reagent must be delivered and mixed, and increased ammonia slip due to less optimal use of reagent. Even if FDEP had evaluated SNCR as an interim measure and determined that SNCR was technically feasible, this facility would likely have had until mid-2018 under the Florida BART rule [27] to begin operating a SNCR system, which would then have ceased operation by no later than 2020 when the facility shut down. Thus, the limited remaining useful life of this facility makes the application of SNCR as an interim control option not practicable for Units 1 and 2.

Comment 24: The Commenter does not believe that EPA can approve Florida's regional haze SIP until FDEP considers the visibility impacts of Crystal River's NO_X emissions on Class I areas other than Chassahowitzka, the nearest Class I area.

Response 24: No further visibility analysis is required for Crystal River because Duke Energy must now shut down Units 1 and 2 by December 31, 2020. EPA agrees that Florida should have considered the visibility improvements at all affected Class I areas in its BART visibility assessments under Option 1; however, EPA does not believe that doing so would have altered the outcome given the limited remaining useful life of the facility.

[27] Florida Admin. Code 62–296.340, "Best Available Retrofit Technology."

Lakeland Electric C.D. McIntosh Jr.

Comment 25: The Commenter believes that the visibility modeling for Lakeland Electric's C.D. McIntosh Jr. (McIntosh) facility should have considered cumulative visibility impacts from Everglades National Park, Okefenokee, and Chassahowitzka.

Response 25: As a general matter, EPA agrees that Florida should have considered the visibility improvements at all affected Class I areas in its BART visibility assessments. For the McIntosh BART analysis, Florida modeled visibility impacts at Chassahowitzka, the nearest Class I area to the facility, as well as at Everglades National Park and Okefenokee, the other mandatory Class I Federal areas within the surrounding 300 km CALPUFF modeling domain used by FDEP. FDEP conducted the visibility modeling consistent with the modeling protocol that VISTAS developed for preparing BART analyses entitled *Protocol for the Application of the CALPUFF Model for Analyses of Best Available Retrofit Technology (BART).* (See appendix L of the Florida regional haze SIP submittal.) This modeling protocol was developed in a transparent manner involving states, EPA, NPS, FWS, and any other interested entities that wished to participate in the public process. The protocol establishes 300 km as the boundary around a BART-subject source in which to model potential visibility impacts at Class I areas, and consistent with this protocol, FDEP modeled the highest visibility impact from the three Class I areas within a 300 km radius of the source.

While FDEP should have considered the visibility improvement at Everglades and Okefenokee when conducting its BART analyses for McIntosh, EPA does not believe that FDEP not doing so has rendered its BART determinations unreasonable. As discussed in more detail in the responses below, FDEP rejected several SO_2 BART options based on excessive cost, not visibility improvement. Moreover, while FDEP did eliminate several NO_X BART options based on low visibility improvement, those values were so low that EPA does not believe that a consideration of cumulative impacts would alter the reasonableness of FDEP's conclusions, especially in light of the fact that the baseline visibility impacts for the 98th percentile most impacted day at Everglades and Okefenokee were only 31 percent and 27 percent, respectively, of those at Chassahowitzka.

Comment 26: EPA received several comments regarding the adequacy of the NO_X BART analysis for Units 1 and 2 at McIntosh. According to the Commenter, EPA cannot approve the BART determination without: (1) Fully evaluating SNCR as a retrofit technology for Unit 2; (2) considering additional available retrofit control technologies such as low NO_X burners, overfire air systems, and flue gas recirculation for Unit 1; (3) setting a NO_X emissions limit for Unit 1; (4) demonstrating why a selective catalytic reduction (SCR) control efficiency greater than 80 percent is not achievable; and (5) calculating the cost-effectiveness of SCR for each individual unit. The Commenter also states that even the incorrect cost-effectiveness values calculated for SCR fall within the range of acceptable values and that SCR should therefore have been selected as BART.

Response 26: Regarding a SNCR evaluation for Unit 2, this unit already has combustion controls in place (flue gas recirculation), lowering its worst case 24-hour NO_X emission rate [28] to approximately 0.22 lb/MMBtu, comparable to what can be achieved with SNCR for this unit. In addition, the technical feasibility of installing SNCR on these units is uncertain because an engineering study would need to be undertaken to ascertain whether the units operate within the temperature range required by SNCR.

With regard to the Commenter's remaining concerns for Units 1 and 2, the BART modeling for Units 1 and 2 predicted a total visibility impact of 0.31 dv at Chassowitzka from their combined NO_X emissions and a visibility impact of approximately 0.20 dv from the NO_X emissions at Unit 1.[29] Moreover, EPA reviewed the operations of Unit 1 and concluded that the modeling based on 2001 to 2003 emissions was sufficiently conservative compared to present operations. Unit 1 emitted a total of 12.3 tons of NO_X from 2009 through 2012, according to EPA's CAMD database, whereas the baseline BART modeling assumed that Unit 1 emitted 2,119 tons of NO_X per year.

FDEP placed greater weight on the lack of potential visibility improvement from controlling NO_X at Units 1 and 2 than the other statutory factors due to

[28] This emissions rate reflects the maximum daily actual emissions from 2001–2003 for Unit 2 used in Florida's CALPUFF modeling.

[29] The BART modeling estimates the maximum eighth highest visibility impact at Chassahowitzka from the emissions from these units over the baseline period to be 1.617 dv with a NO_X contribution of approximately 0.31 dv. See Exhibit 2 of the Florida regional haze submittal, page 416. Unit 1 contributes approximately two-thirds of the total NO_X emissions from these units. See Exhibit 2 of the Florida regional haze submittal, page 415.

the modeling results described above and concluded that no additional controls were required to satisfy NO_X BART and that no adjustment to the existing permits were warranted. Furthermore, because the available controls (low NO_X burners, flue gas recirculation, and SNCR) for Unit 1 would only reduce the visibility impacts by 25 to 50 percent, the anticipated improvement from these controls would be as low as 0.05 to 0.1 dv assuming 2001–2003 emission levels. Under the same logic, adjusting the control efficiency of the modeled SCR system from 80 to 90 percent or calculating the cost-effectiveness individually for each unit would not change the fact that the visibility improvement associated with the installation of NO_X controls would remain low.

Regarding a NO_X BART emissions limit for Unit 1, the RHR does require an emissions limit for each visibility-impairing pollutant at each BART-subject source. FDEP submitted a letter to EPA dated July 30, 2013, in which it committed to provide EPA with a regional haze SIP revision no later than March 19, 2015, the deadline for the State's five-year regional haze periodic progress report, that will include a NO_X BART emissions limit for Unit 1 reflecting best operating practices for good combustion. The State also committed to modify the title V operating permit for the facility by March 19, 2015, to include this limit. The limit will be effective no later than the effective date of EPA's approval of the SIP revision. Because of the limited visibility impact of NO_X emissions from Unit 1 and because the BART limit will reflect the existing level of control, EPA concludes that it is reasonable for the State to implement a NO_X BART emissions limit for Unit 1 upon EPA's approval of the aforementioned SIP revision. Under these unique circumstances, EPA concludes that FDEP's NO_X BART determination for the McIntosh facility was ultimately reasonable. The major visibility-impairing pollutant of concern at this source, SO_2, has been addressed, and the delay in establishing a NO_X BART emissions limit for Unit 1 will have no appreciable impact on visibility at any Class I area.

Comment 27: The Commenter alleges that FDEP overestimated the costs and underestimated the visibility benefits of reducing fuel oil sulfur content in its SO_2 BART analysis for McIntosh and submitted an analysis evaluating the visibility benefits of reducing the fuel oil sulfur content and associated costs. According to the Commenter, FDEP should have included the visibility improvements at Everglades National Park and Okefenokee Wilderness Area associated with the 0.7 percent sulfur fuel evaluation and should not have used the 2001–2003 baseline period to estimate heat inputs and fuel costs.

Response 27: EPA disagrees with the Commenter. With respect to the information provided by the Commenter, EPA finds that the Commenter used different baselines to evaluate the costs and visibility benefits of a lower sulfur content fuel oil. Specifically, the Commenter based costs on lower 2009–2011 operating rates and fuel-use data, but evaluated visibility benefits based on a 2001–2003 baseline period with a much higher operating rate. This approach neglects to consider that less fuel use would result in less visibility impairment. Had the Commenter adjusted the visibility benefits to match 2009–2011 operating rates, the visibility benefits would have been much lower. Therefore, the Commenter's $/dv estimates are artificially low. Consistent with the State's BART modeling protocol, FDEP's visibility modeling was appropriately based on a 2001–2003 baseline for estimates of both visibility impacts and fuel consumption, assuring that higher visibility impacts from the higher level of fuel utilization in that period were properly considered. FDEP then based total costs on the latest estimates of fuel costs assuming baseline year consumption. Finally, while FDEP should have considered cumulative visibility impacts in assessing the 0.7 percent sulfur fuel oil option, it is ultimately of no consequence because FDEP selected this option as BART for both Units 1 and 2.

Comment 28: The Commenter states that FDEP should not have eliminated DSI as SO_2 BART for McIntosh because "the space required for DSI is minimal, as is the capital cost."

Response 28: EPA notes that DSI requires an adequate PM control device to collect the sulfate particles generated by the sorbent injection system. Currently, there are no add-on particulate controls on the oil-fired units at McIntosh. Installation of DSI would therefore require installation of a fabric filter system or ESP to capture the sulfate particles generated. The expense of adding a new particulate control system in addition to DSI itself would have made this control option not cost-effective for Units 1 and 2 at McIntosh.

Comment 29: The Commenter believes that FDEP also should have evaluated the firing of 0.3 percent sulfur fuel oil, 0.5 percent sulfur fuel oil, distillate, and Ultra Low Sulfur Diesel (ULSD) in its SO_2 BART analysis for McIntosh.

Response 29: As is discussed in more detail in EPA's response to Comment 14, the BART Guidelines do not require states to list all permutations of available control levels that exist for a given technology. FDEP evaluated switching from 0.7 percent sulfur fuel oil to 0.3 percent sulfur fuel oil in its BART analyses for several other facilities. In these other instances, FDEP presented the cost-effectiveness of switching to 0.7 percent and 0.3 percent sulfur fuel oils, which are the commonly-available grades of residual fuel oil. The use of 0.5 percent sulfur fuel oil would require a blending of these two fuel oils, and its cost-effectiveness can be interpolated from the information provided. Distillate and ULSD would be substantially more expensive than 0.3 percent sulfur fuel oil, which FDEP had already determined was not cost-effective. FDEP did not re-perform this analysis for Units 1 and 2 at McIntosh because distillate oil and ULSD were found to not be cost-effective in the BART analyses for other facilities. EPA does not believe that an explicit evaluation of these additional fuels for McIntosh would have resulted in a different conclusion because the analysis is dependent on fuel cost, and fuel cost is approximately uniform among the facilities evaluated by FDEP given that the suppliers of fuel oil in Florida that service the other EGUs are the same as those that supply Lakeland Electric, including the McIntosh facility.

FPL Manatee

Comment 30: The Commenter believes that FDEP also should have considered 0.5 percent sulfur fuel oil, distillate, and ULSD fuel oils in the SO_2 BART analysis for FPL Manatee (Manatee).

Response 30: See response to Comment 29. The same rationale for not assessing additional fuels at McIntosh also applies to Manatee.

Comment 31: The Commenter alleges that FDEP overestimated the costs and underestimated the visibility benefits of reducing fuel oil sulfur content in evaluating SO_2 BART options. According to the Commenter, FDEP should have included the cumulative visibility improvements at Everglades National Park and Chassahowitzka Wilderness Area associated with the fuel switching options and should have used a 2009–2011 baseline period to estimate heat inputs and fuel costs rather than the 2001–2003 period chosen by FDEP. The Commenter contends that 0.3 percent sulfur fuel oil

is SO_2 BART because FDEP overestimated the cost of switching to this fuel oil by not considering that the use of fuel oil is "likely to continue to decrease in favor of gas."

Response 31: In regards to the comments on cost estimates and the correct baseline period, see the response to Comment 27. In regards to the comment on cumulative visibility benefits, while EPA agrees that Florida should have considered the visibility improvements at all affected Class I areas in its BART visibility assessments, EPA does not believe that doing so would have altered the outcome here. For the Manatee BART analysis, Florida modeled visibility impacts at the Chassahowitzka National Wildlife Area as well as at Everglades National Park, the only other mandatory Class I Federal area within the surrounding 300 km CALPUFF modeling domain. For SO_2 BART, FDEP evaluated the costs and visibility benefits associated with switching from 1.0 percent sulfur fuel oil to 0.7 percent and 0.3 percent sulfur fuel oil. FDEP selected 0.7 percent sulfur fuel oil as BART at a cost-effectiveness of $5,468/ton of SO_2 reduced and rejected 0.3 percent sulfur fuel oil at a cost-effectiveness of $6,542/ton of SO_2 reduced. The incremental cost-effectiveness of lowering the sulfur level in fuel oil from 0.7 percent to 0.3 percent was $7,348/ton of SO_2 reduced. The Commenter did not provide any data in support of its contention that the use of fuel oil is likely to continue to decrease in favor of gas such that a switch to 0.3 percent sulfur fuel oil would be more cost effective. EPA agrees with FDEP's SO_2 BART determination and is not persuaded that, given the incremental cost-effectiveness of more stringent controls, consideration of cumulative visibility benefits or the Commenter's assumptions regarding trends in fuel oil usage would have resulted in a different BART determination for SO_2.

Comment 32: The Commenter argues that BART should be a fuel-specific determination and that EPA should not allow the source to blend a fuel oil with sulfur content higher than what is determined to be BART with natural gas. The Commenter believes that blending fuel oil with natural gas is not a legitimate offset because natural gas would be used anyway.

Response 32: EPA disagrees with the Commenter's view that BART needs to be a fuel-specific determination. Except in cases where work practices are delineated, BART is an emissions limit, not a specified technology.[30] Blending fuels to lower the emissions rate is an acceptable and cost-effective method to reduce emissions and their associated visibility impacts, and it is allowed by the EPA New Source Performance Standards (NSPS) subpart D rules for oil-fired boilers. The Commenter's statement that "natural gas would be used anyway" is not explained or supported.

Comment 33: The Commenter believes that FDEP should have evaluated additional combustion controls and SNCR in the NO_X BART analysis for Manatee and cites to units in EPA's CAMD database with lower NO_X emissions rates than the rate selected as NO_X BART.

Response 33: The Manatee units are currently equipped with multiple NO_X emissions control methods including: Flue gas recirculation, overfire air systems, staged combustion, low NO_X burners, and re-burn. FDEP assessed SCR as a technically feasible post-combustion NO_X control, but did not evaluate SNCR. For oil-fired units, the technical feasibility of SNCR is uncertain because SNCR depends on the availability of an accessible location within the furnace with relatively high temperatures where injectors could be installed. To determine whether such a location existed in these units would have required a detailed engineering analysis because oil-fired boilers typically operate at lower peak temperatures than coal-fired boilers. While the BART Guidelines ordinarily require states to make a reasoned determination that a widely available control technology, such as SNCR, is technically infeasible before rejecting it, EPA does not believe that SCR would be BART for NO_X at Manatee. Six to 17 percent of the 98th percentile visibility impact at the Chassahowitzka Wilderness Area from 2001–2003 was attributable to NO_X emissions from Manatee. FDEP evaluated SCR operating at 90 percent efficiency as part of its BART analysis for Manatee and determined that this control technology would improve visibility by 0.47 dv at a cost of $3,776/ton of NO_X reduced, or approximately $66 million/dv. The likely visibility improvement from SNCR, if it were feasible for these oil-fired units, would range from 0.1 dv to 0.2 dv (assuming a 25 to 40 percent reduction potentially achievable with the use of SNCR). EPA concludes that, in light of the visibility improvement predicted for a highly efficient SCR, that a more thorough evaluation of a less effective technology would not have changed the State's BART determination.

FPL Martin Power Plant

Comment 34: The Commenter believes that FDEP also should have considered 0.5 percent sulfur fuel oil, distillate, and ULSD fuel oils in the SO_2 BART analysis for FPL Martin Power Plant (Martin).

Response 34: See the response to Comment 29.

Comment 35: The Commenter contends that FDEP inappropriately dismissed FGD systems from consideration as BART because, according to the Commenter, FGD systems are "feasible and in use on oil-fired boilers" even though these systems "are seldom used on oil-fired boilers because it is more cost-effective to reduce fuel sulfur content."

Response 35: According to the BART Guidelines, "[a]vailable retrofit control options are those air pollution control technologies with a practical potential for application to the emissions unit and the regulated pollutant under evaluation."[31] Based on a review of EPA's Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emissions Rate (RACT/BACT/LAER) Clearinghouse,[32] EPA is not aware of any oil-fired utility boilers currently equipped with a FGD system. As noted by the Commenter, oil-fired utility boilers that need to reduce SO_2 emissions typically rely on lower sulfur fuel oil where the desulfurization is conducted at the refinery rather than after combustion in the utility boiler. Thus, EPA believes that the State's decision not to include FGD in the BART analysis for this facility was reasonable and consistent with the BART Guidelines.

Comment 36: The Commenter alleges that FDEP overestimated the costs and underestimated the visibility benefits of reducing fuel oil sulfur content in evaluating SO_2 BART options. According to the Commenter, FDEP should have included the cumulative visibility improvements at Everglades National Park and Chassahowitzka Wilderness Area associated with the fuel switching options and should have used a 2009–2011 baseline period to estimate heat inputs and fuel costs rather than the 2001–2003 period chosen by FDEP.

Response 36: In regards to the comments on cost estimates and the correct baseline period, see the response to Comment 27. In regards to the comment on cumulative visibility benefits, while EPA agrees that Florida

[30] 40 CFR part 51 appendix Y, I.E.3.

[31] 40 CFR part 51 appendix Y, IV.D.1.

[32] *http://cfpub.epa.gov/RBLC/.*

should have considered the visibility improvements at all affected Class I areas in its BART visibility assessments, EPA does not think doing so would have altered the outcome here. For the Martin BART analysis, Florida modeled visibility impacts at the Chassahowitzka Wilderness Area as well as at Everglades National Park, the only other mandatory Class I Federal area within the surrounding 300 km CALPUFF modeling domain. For SO_2 BART, FDEP evaluated the costs and visibility benefits associated with switching from 0.7 percent sulfur fuel oil to 0.3 percent sulfur fuel oil. FDEP rejected 0.3 percent sulfur fuel oil at a cost-effectiveness of $7,348/ton of SO_2 reduced. Similarly, for NO_X BART, FDEP evaluated the costs and visibility benefits associated with the installation of SCR. FDEP rejected SCR at a cost-effectiveness of $5,323/ton of NO_X reduced, with a visibility improvement at Chassahowitzka of just 0.15 dv. EPA agrees with FDEP's SO_2 and NO_X BART determinations and is not persuaded, given the cost-effectiveness values associated with more stringent controls, that consideration of cumulative visibility benefits would have resulted in a different BART determination for SO_2.

Comment 37: The Commenter believes that FDEP should have evaluated additional combustion controls and SNCR in the NO_X BART analysis and cites to units in EPA's CAMD database with lower NO_X emissions rates than the rate selected as NO_X BART.

Response 37: See the response to Comment 33. The Martin units, like the Manatee units, are currently equipped with multiple NO_X emissions control methods including flue gas recirculation, overfire air systems, staged combustion, and low NO_X burners. FDEP assessed SCR as a technically feasible post-combustion NO_X control, but did not evaluate SNCR. For oil-fired units, the technical feasibility of SNCR is uncertain because SNCR depends on the availability of an accessible location within the furnace with relatively high temperatures where injectors could be installed. To determine whether such a location existed in these units would have required a detailed engineering analysis because oil-fired boilers typically operate at lower peak temperatures than coal-fired boilers. While the BART Guidelines ordinarily require states to make a reasoned determination that a widely available control technology, such as SNCR, is technically infeasible before rejecting it, EPA does not believe that SCR would be BART for NO_X at Martin. Six to seven percent of the 98th percentile visibility impact at the Chassahowitzka Wilderness Area from 2001–2003 was attributable to NO_X emissions from Martin. FDEP evaluated SCR operating at 90 percent efficiency as part of its BART analysis for Martin and determined that this control technology would improve visibility by 0.15 dv at a cost of $5,323/per ton of NO_X reduced. Therefore, the likely visibility improvement from SNCR, if it were feasible for these oil-fired units, would be less than 0.1 dv (assuming a 25 to 40 percent reduction achievable with the use of SNCR). EPA concludes that, in light of the visibility improvement predicted for a highly efficient SCR, that a more thorough evaluation of a less effective technology would not have changed the State's BART determination.

Comment 38: The Commenter states that FDEP's PM BART analysis should have considered the increase in PM emissions resulting from the re-injection of fly ash into the boiler and that FDEP "should prohibit the reinjection of fly ash to provide an economical interim reduction in PM_{10} emissions."

Response 38: EPA disagrees that FDEP should have considered the elimination or restriction of fly ash reinjection in its PM BART analysis. EPA has no data on the impacts of fly ash re-injection on oil-fired utility boilers and no basis to determine whether prohibiting fly ash re-injection would improve visibility because of the low particulate load of the flue gas emitted from oil-fired boilers. Although restricting fly ash re-injection is not an emissions control technology in the conventional sense, EPA believes that the BART Guidelines' instructions on technical feasibility are instructive. Under the BART Guidelines, a control technology is technically feasible if it is "available" (i.e., if a source owner may obtain it through commercial channels or it is otherwise available within the common sense meaning of the term) and "applicable" (i.e., it can reasonably be installed and operated on the source at issue).[33] An applicability evaluation generally involves consideration of gas stream characteristics, the capabilities of the technology, and unresolvable technical difficulties. Operators of certain coal-fired boilers re-inject fly ash for the purpose of energy conservation, not emissions control. Coal-fired boilers generate substantially greater amounts of ash and have particulate control technologies with different characteristics than oil-fired boilers. Although fly ash re-injection has been prohibited for certain coal-fired boilers, there is no evidence that this methodology has been used for oil-fired boilers and no evidence that the gas streams are similar enough such that the process would be applicable as a PM emissions control technique for oil-fired boilers. For these reasons, EPA believes that the Commenter's extrapolation of a control technique from coal-fired to oil-fired boilers is not appropriate in this instance.

[33] 40 CFR part 51 appendix Y, IV.D.2.

FPL Turkey Point Power Plant

Comment 39: The Commenter believes that FDEP also should have considered 0.5 percent sulfur fuel oil, distillate, and ULSD fuel oils in the SO_2 BART analysis and 0.3 percent sulfur fuel oil, 0.5 percent sulfur fuel oil, distillate, and ULSD fuel oils in the PM BART analysis for FPL Turkey Point Power Plant (Turkey Point).

Response 39: Regarding SO_2 BART, see the response to Comment 29. With regard to PM BART, Unit 2 is shutting down and Unit 1 has a PM emissions limit of 0.07 lb/MMBtu and is limited under BART to operating at no more than 25 percent of capacity on fuel oil with the remainder of operations on natural gas. This limit will result in an emissions reduction of over 80 percent from the baseline emissions from Units 1 and 2 combined. EPA believes that, in light of these conditions and because the baseline PM contribution from this facility is approximately 0.1 dv, any additional PM measures would result in negligible visibility improvement.

Comment 40: The Commenter alleges that FDEP overestimated the costs and underestimated the visibility benefits of reducing fuel oil sulfur content in evaluating SO_2 BART options. According to the Commenter, FDEP should have used a 2009–2011 baseline period to estimate heat inputs and fuel costs rather than the 2001–2003 period chosen by FDEP. The Commenter also believes that it is inconsistent for FDEP to conclude that 0.7 percent sulfur fuel oil is feasible at $19,197/ton but that 0.3 percent sulfur fuel oil is not feasible at $16,044/ton and to conclude that its SO_2 BART determination will produce a significant visibility improvement of 0.6 dv while "dismiss[ing] 2.5 deciview and 1.5 deciview incremental improvements as 'extremely small.'"

Response 40: In regards to the comments on cost estimates and the correct baseline period, see the response to Comment 27. Regarding the alleged inconsistency in cost-effectiveness, FDEP did not rely on this factor for its SO_2 BART determination for Turkey Point. As part of an alternative PM emissions reduction strategy, FDEP

approved the use of 0.7 percent low sulfur fuel oil, a reduction in the PM emissions limit to 0.07 lb/MMBtu, and a limitation on the use of fuel oil equivalent to a capacity factor of 25 percent. For SO_2 BART, FDEP evaluated wet and dry FGD, 0.7 percent sulfur fuel oil, and 0.3 percent sulfur fuel oil. Despite the high cost-effectiveness of 0.7 percent sulfur fuel oil, FDEP determined that it was SO_2 BART due to the fact that the fuel also satisfied the PM BART requirement.

Comment 41: The Commenter believes that FDEP should have evaluated additional combustion controls and SNCR in the NO_X BART analysis for Turkey Point and cites to units in the CAMD database with lower NO_X emissions rates than the rate selected as NO_X BART.

Response 41: No further analysis was necessary for Turkey Point Unit 2 because there is a federally enforceable requirement to shut down the unit as expeditiously as practicable, but no later than December 31, 2013. Unit 1 currently employs low NO_X burners that reduce NO_X formation in the combustion zone. For NO_X BART, FDEP evaluated SNCR and SCR as potential post-combustion controls. Baseline visibility modeling for Turkey Point showed that nitrates contributed less than three percent of the visibility impairment associated with the emissions from both Units 1 and 2 at this facility. In light of these minimal visibility impacts, FDEP determined that additional NO_X reductions from Unit 1 were not required, and maintained the existing NO_X emissions limit of 0.40 lb/MMBtu when firing natural gas and 0.53 lb/MMBtu when firing fuel oil, with continuous emissions monitoring and a 30-day rolling average based on a state rule, 62–296.570 F.A.C., for NO_X reasonably available control technology. EPA concludes that FDEP's conclusions were reasonable.

Comment 42: The Commenter states that FDEP's PM BART analysis should have considered the increase in PM emissions resulting from the re-injection of fly ash into the boiler and that FDEP should have included the elimination of fly ash re-injection in its PM BART analysis.

Response 42: See the response to Comment 38.

JEA Northside

Comment 43: The Commenter alleges that JEA Northside had the lowest $/ton fuel switching option rejected by FDEP and that FDEP did not explain why it rejected this option or why it did not evaluate a more comprehensive switch to lower sulfur fuels. The Commenter contends that FDEP should explain why a switch from 1.0 percent to 0.7 percent sulfur fuel oil is not cost-effective at JEA Northside when it is cost-effective at Manatee.

Response 43: FDEP's cost-effectiveness estimate for converting from 1.8 to 1.0 percent sulfur fuel oil was $7,184/ton of SO_2 reduced. FDEP also estimated that the conversion would cost $31.1 million/dv. EPA concurs that these high cost-effectiveness values provide sufficient justification for FDEP's decision to reject 1.0 percent sulfur fuel oil as SO_2 BART for this facility. In its BART analyses for other oil-fired units, FDEP presented the cost-effectiveness of switching to 0.7 percent and 0.3 percent sulfur fuel oils, which are the commonly available grades of residual fuel oil. FDEP did not extend the analysis to JEA Northside because it was found not to be cost-effective in the BART analyses for other facilities. EPA does not believe that an explicit evaluation of these additional fuels for JEA Northside would have resulted in a different conclusion because the analysis is dependent on fuel cost, a cost that is approximately uniform among the facilities evaluated by FDEP given that the suppliers of fuel oil in Florida that service the other facilities are the same as those that supply JEA Northside.

Comment 44: The Commenter states that FDEP did not justify the use of an 80 percent control efficiency assumption for SCR and that any additional energy costs associated with the control should have been included in the cost analysis and not "double-counted." The Commenter also states that the ammonia issues identified by FDEP are common to all SCR systems and can be addressed by good operating procedures.

Response 44: FDEP included an evaluation of the energy and non-air quality impacts associated with SCR for completeness because these impacts are, collectively, one of the five statutory factors to be considered in a BART determination. The improvement in visibility at Okefenokee associated with the installation of an SCR operating at 80 percent efficiency and Unit 3 operating at a maximum permitted capacity of 28 percent was estimated to be 0.26 dv. A SCR operating at 90 percent efficiency would improve this estimate by roughly 0.03 dv. EPA believes that the limited visibility improvement that would result from adjusting the control efficiency of SCR to 90 percent would not have changed FDEP's conclusion that SCR is not warranted as BART at JEA Northside.

Visibility Metrics

Comment 45: The Commenter alleges that FDEP was inconsistent in its approach to evaluating dollars per dv values, citing the $11.3 million (M)/dv value associated with SO_2 BART for McIntosh and the $17.7M/dv value associated with SNCR at Crystal River (a control not selected as NO_X BART at the facility). The Commenter also states that FDEP's conclusions regarding $/dv values are not consistent with those across the country. The Commenter further states that FDEP does not explain why it determined that upgrading to FGD at McIntosh and adding FGD at Lansing Smith are not reasonable when the cost-effectiveness values associated with those controls are lower than the $6,542/ton cost-effectiveness value associated with SO_2 BART at Manatee.

Response 45: FDEP evaluated BART on a case-by-case basis using facility-specific conditions. Thus, it is to be expected that the resulting BART determinations may appear to be inconsistent when compared using a single metric. For example, at Manatee, FDEP determined that equivalent visibility improvements to those that can be achieved by switching to 0.7 percent sulfur fuel oil could be achieved by removing the current prohibition on blending and co-firing 1.0 percent sulfur fuel oil with natural gas and by lowering the allowable emissions limit to 0.8 lb/MMBtu (12-month rolling average). The estimate of $6,542/ton for SO_2 controls is based on using lower sulfur fuel oil only for compliance, and the blending and co-firing option is expected to be less expensive in practice. By comparison, at Lansing Smith, the limited incremental visibility improvement (0.07–0.09 dv) from installing a FGD was weighed heavily in FDEP's BART determination even though FDEP concluded the cost-effectiveness values would have been reasonable had there been greater visibility improvement.

Comment 46: The Commenter is concerned that the proposed source-specific BART and reasonable progress emissions limits for the Florida EGUs subject to CAIR would allow emissions to increase compared to 2011 actual emissions.

Response 46: EPA does not consider the situation presented by the Commenter to be a realistic future scenario. The Commenter assumes that the present use of natural gas at oil/gas units will be replaced with the use of residual fuel oil at the levels used in

2001–2003. The Commenter's concern that emissions may increase are based on the assumption that three oil-fired Florida EGUs (Martin, Manatee, and Turkey Point) could revert to firing residual oil rather than the current use of natural gas. EPA does not consider reversion to oil-firing at these units to be a plausible scenario for the first implementation period. FDEP relied on the VISTAS IPM projections to project 2018 emissions that consider, among other factors, the expected price of oil and gas in the projection year to estimate facility utilization. As noted in the Florida regional haze SIP narrative, these projections are conservative because several of the units have either shut down or repowered to gas entirely, making the scenario of reverting to firing residual oil even more unlikely and resulting in even lower emissions levels in 2011 than predicted for 2018.

Use of Interpolative Methods

Comment 47: The Commenter states that EPA cannot approve the BART determinations for Crystal River, McIntosh, and JEA Northside because FDEP relied on "rough calculations 'instead of modeling' to determine visibility impacts under step 5 of the BART analysis."

Response 47: EPA has reviewed the visibility impact calculation procedures for the BART determinations identified by the Commenter. While the calculations were not performed in accordance with the BART Guidelines, EPA agrees with FDEP that they are acceptable in this instance. The methodology used for these facilities to estimate visibility impacts relied on a simplifying assumption that the visibility impacts would be reduced in direct proportion to the reduction in emissions of individual visibility-impairing pollutants. Based on the results of other BART determinations where emissions reductions have been modeled with CALPUFF, the direct relationship assumption would likely overestimate reductions in visibility impacts as opposed to understating them. EPA acknowledges that unlike a Gaussian plume model, such as AERMOD, there is not a direct linear relationship between emissions and calculated visibility impacts when using the CALPUFF modeling system. However, CALPUFF's calculation of visibility impacts has been termed "quasi-linear" in EPA's Guideline on Air Quality Models.[34] Therefore, an assumption of a linear response to changes in emissions is a reasonable estimation and the simplified methodology used for these BART determinations likely provides conservative overestimates of visibility impact reductions.

Comment 48: The Commenter states that it would be unlawful and arbitrary for EPA to fully approve Florida's regional haze SIP because it "improperly relies on the illegal [CAIR] for inventories and projections from upwind states, which in turn form the basis for Florida's [RPGs] and its entire reasonable progress strategy." According to the Commenter, the State's RPGs also include assumptions based on Florida's SO_2 emissions under CAIR and there is no guarantee that CAIR's eventual replacement rule will cover SO_2 emissions and achieve the emissions reductions predicted under CAIR. The Commenter also contends that it is not appropriate for EPA to wait until the five-year progress report to update these RPGs based on updated information; that states which have failed to update their SIPs to remove reliance on CAIR do not have a "reliance interest" in CAIR; and that Florida must revise its Q/d reasonable progress exemption threshold because it was selected based on Florida's projected progress toward natural visibility conditions that relied on CAIR. The Commenter believes that it is factually and legally incorrect for EPA to state that the emissions reductions associated with CAIR will be sufficiently permanent and enforceable for the necessary time period when "CAIR has been struck down" and EPA has "disapproved reliance on CAIR for regional haze purposes."

Response 48: With regard to CAIR, see the response to Comment 1. With regard to Q/d, see the response to Comment 6. Regarding the regional haze SIP disapproval actions cited by the Commenter, EPA took all of these actions before the D.C. Circuit ruling in *EME Homer City*. Since that decision, EPA has stated its belief that it would be appropriate to rescind the limited disapproval actions for those regional haze SIPs that relied on CAIR should *EME Homer City* be upheld. *See, e.g.*, 78 FR 11805, 11807 (Feb. 20, 2013).

IV. Final Action

EPA is finalizing a full approval of all remaining portions of Florida's regional haze SIP. EPA also finds that the entire Florida regional haze SIP now meets the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–51.308.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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, 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

[34] 40 CFR part 51, appendix W.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 14, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. Section 52.520 is amended:

■ a. In paragraph (c) by adding one new entry in numerical order under Chapter 62–296 Stationary Sources—Emissions Standards for "62–296.340";

■ b. In paragraph (e) by adding five new entries for "Initial Regional Haze Plan," "Regional Haze Plan Amendment 1," "Regional Haze Plan Amendment 2," "Progress Energy Permit (Air Permit No. 0170004–038–AC)," and "Update to October 15, 2013, Progress Energy Permit (Air Permit No. 0170004–038–AC)" at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA REGULATIONS

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
	Chapter 62–296 Stationary Sources—Emissions Standards			
62–296.340	Best Available Retrofit Technology	1/31/07	8/29/13 [Insert citations of publication].	

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA-approval date	**Federal Register** notice	Explanation
Initial Regional Haze Plan	3/19/10	8/29/13	[Insert citation of publication]	
Regional Haze Plan Amendment 1	8/31/10	8/29/13	[Insert citation of publication]	
Regional Haze Plan Amendment 2	9/17/12	8/29/13	[Insert citation of publication]	Remaining Portion of Regional Haze Plan Amendment not approved on November 29, 2012.
Progress Energy Permit (Air Permit No. 0170004–038–AC).	10/15/12	8/29/13	[Insert citation of publication]	
Update to October 15, 2013, Progress Energy Permit (Air Permit No. 0170004–038–AC).	5/2/13	8/29/13	[Insert citation of publication]	

[FR Doc. 2013–21028 Filed 8–28–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0633; FRL–9900–32–Region6]

Approval and Promulgation of Implementation Plans; Arkansas; Interstate Transport of Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of State Implementation Plan (SIP) submittals from the State of Arkansas to address Clean Air Act (CAA or Act) requirements in section 110(a)(2)(D)(i)(I) that prohibit air emissions which will contribute significantly to nonattainment or interfere with maintenance in any other state for the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA has determined that the existing SIP for Arkansas contains adequate provisions to prohibit air emissions from significantly contributing to nonattainment or interfering with maintenance of the 1997 annual and 24-hour $PM_{2.5}$ NAAQS (1997 $PM_{2.5}$ NAAQS) and the 2006 revised 24-hour $PM_{2.5}$ NAAQS (2006 $PM_{2.5}$ NAAQS) in any other state as required by section 110(a)(2)(D)(i)(I) of the Act.

DATES: This final rule is effective on September 30, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2008–0633. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6645; email address *young.carl@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

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I. Background

The background for today's action is discussed in detail in our May 7, 2013 proposal (78 FR 26568). In that notice, we proposed to approve portions of SIP submittals for the State of Arkansas submitted on December 17, 2007, and September 16, 2009, and the technical supplement submitted on March 20, 2013, that determined the existing SIP for Arkansas contains adequate provisions to prohibit air emissions from contributing significantly to nonattainment or interfering with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state as required by CAA section 110(a)(2)(D)(i)(I). This action is being taken under section 110 of the Act. We did not receive any comments regarding our proposal.

II. Final Action

We are approving portions of SIP submittals for the State of Arkansas submitted on December 17, 2007, and September 16, 2009, and the technical supplement submitted on March 20, 2013, to address interstate transport for the 1997 and 2006 $PM_{2.5}$ NAAQS. We approve the portions of the SIP submittals and technical supplement determining the existing SIP for Arkansas contains adequate provisions to prohibit air emissions from contributing significantly to nonattainment or interfering with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state as required by CAA section 110(a)(2)(D)(i)(I). This action is being taken under section 110 of the Act.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 October 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 14, 2013.

William K. Honker,

Acting Regional Administrator, Region 6.

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 E—Arkansas

■ 2. The third table in § 52.170(e) entitled "EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP" is amended by adding an entry at the end for "Interstate transport for the 1997 and 2006 $PM_{2.5}$ NAAQS" to read as follows:

§ 52.170 Identification of plan.

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(e) * * *

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EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
Interstate transport for the 1997 and 2006 $PM_{2.5}$ NAAQS (contribute to nonattainment or interfere with maintenance).	Statewide	12/17/2007 9/16/2009	8/29/2013 [Insert FR page number where document begins].	

[FR Doc. 2013–21024 Filed 8–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0064; FRL–9813–9]

Revision of Air Quality Implementation Plan; California; Sacramento Metropolitan Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and technical amendments.

SUMMARY: EPA is finalizing approval of two permitting rules submitted by California as a revision to the Sacramento Metropolitan Air Quality Management District (SMAQMD or District) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on February 14, 2013 and concern construction and modification of stationary sources of air pollution within Sacramento County. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA). Final approval of these rules makes the rules federally enforceable and corrects program deficiencies identified in a previous EPA rulemaking (76 FR 43183, July 20, 2011). EPA is also making technical amendments to the Code of Federal Regulations (CFR) to reflect this previous rulemaking, which removed an obsolete provision from the California SIP.

DATES: *Effective Date:* This rule is effective on September 30, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0064 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Proposed Action

On February 14, 2013 (78 FR 10589), EPA proposed to fully approve the following rules that were submitted for incorporation into the California SIP.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended/adopted	Submitted
SMAQMD	214	Federal New Source Review	Amended 8/23/12	9/26/12
SMAQMD	217	Public Notice Requirements for Permits	Adopted 8/23/12	9/26/12

We proposed to approve these rules based on a conclusion that they satisfy the applicable CAA requirements. Our proposed rule and related Technical Support Document (TSD) contain more information on the basis for this rulemaking and on our evaluation of the submitted rules.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from the SMAQMD. We summarize the comment and provide our response below.

Comment: The SMAQMD requested confirmation that EPA's final rule to approve Rule 214 and Rule 217 into the SIP will remove the 1984 version of Rule 202 ("New Source Review") from the California SIP. The District stated that, based on EPA's statements in the TSD for a previous rulemaking action on SMAQMD permitting rules that were intended to replace Rule 202 in the SIP (76 FR 43183, July 20, 2011), the District had expected that Rule 202 would be removed from the SIP but that the necessary language to amend the California SIP in 40 CFR part 52 had not been included in EPA's final rule. The SMAQMD stated that it supports EPA's proposed approvals and requests only that the regulatory language to delete Rule 202 from the SIP be included in EPA's final action on Rule 214 and Rule 217.

EPA Response: We agree with the District that SMAQMD Rule 202 should have been removed from the California SIP as a result of the referenced July 20, 2011 final action on SMAQMD permitting rules that were intended to replace Rule 202. Specifically, on July 20, 2011, EPA finalized a full approval of Rule 203 and limited approval/limited disapproval of Rule 214. *See* 76 FR 43183 (July 20, 2011). EPA explained in the proposal for this rulemaking that "[t]hese two new rules will replace in its entirety, the existing SIP approved NSR/PSD programs contained in Rule 202." 76 FR 28942 at 28943 (May 19, 2011); *see also* U.S. EPA, Region IX, Technical Support Document for EPA's Notice of Proposed Rulemaking for the California SIP, Sacramento Metropolitan Air Quality Management District, Rule 214 (Federal New Source Review), Rule 203 (Prevention of Significant Deterioration), May 6, 2011, at 1 ("Upon approval into the SIP, [Rules 214 and 203] will replace current SIP Rule 202—*New Source Review*, which was approved into the SIP by EPA on June 19, 1985 (50 FR 25417)." EPA received no comments on this proposed rule and finalized the rulemaking as proposed. *See* 76 FR 43183 (July 20, 2011). In the final regulatory text codifying this final action, however, EPA incorporated Rule 214 and Rule 203 into the SIP but neglected to remove Rule 202. *See* 76 FR at 43185.

In response to SMAQMD's comment, we are making a technical amendment to 40 CFR 52.220 to correct this error by removing Rule 202 from the SMAQMD portion of the California SIP. This technical amendment makes no change to the substance of our July 20, 2011 final action or to today's final action to fully approve Rule 214 and Rule 217 into the California SIP.

III. EPA Action

No comments were submitted that change our assessment that submitted Rule 214 and Rule 217 satisfy the applicable CAA requirements. Therefore, under CAA section 110(k)(3) and for the reasons set forth in our February 14, 2013 proposed rule, we are fully approving Rule 214 and Rule 217. This action incorporates the submitted rules into the SMAQMD portion of the California SIP and makes them federally enforceable.

Simultaneously, we are making a technical amendment to 40 CFR 52.220 to remove Rule 202 from the SIP, consistent with the District's intent and EPA's final rule at 76 FR 43183 (July 20, 2011).

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 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 final 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter,

Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 25, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(159)(i)(B) and (c)(427) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(159) * * *

(i) * * *

(A) * * *

(B) Previously approved on February 6, 1985 and now deleted without replacement: Rule 202.

* * * * *

(427) New and amended regulations for the following APCDs were submitted on September 26, 2012, by the Governor's Designee.

(i) Incorporation by Reference.

(A) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 214, "Federal New Source Review," amended on August 23, 2012.

(*2*) Rule 217, "Public Notice Requirements for Permits," adopted on August 23, 2012.

[FR Doc. 2013–20920 Filed 8–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0673; FRL–9900–49–Region5]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Redesignation of the Detroit-Ann Arbor Area to Attainment of the 1997 Annual Standard and the 2006 24-Hour Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, under the Clean Air Act (CAA), the state of Michigan's request to redesignate the Detroit-Ann Arbor nonattainment area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) to attainment for the 1997 annual and 2006 24-hour national ambient air quality standards (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). On July 5, 2011, the Michigan Department of Environmental Quality (MDEQ) submitted a request for EPA to redesignate the Detroit-Ann Arbor Michigan nonattainment area. EPA determined that the Detroit-Ann Arbor area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ standard, and proposed on July 2, 2013, to approve Michigan's request to redesignate the area. EPA is taking final action today on that proposal. EPA also is taking final action in this rulemaking on several related proposals. EPA is approving, as a revision to the Michigan state implementation plan (SIP), the state's plan for maintaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the area through 2023. Finally, EPA finds adequate and is approving Michigan's nitrogen oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2023 for the Detroit-Ann Arbor area. EPA, therefore, grants Michigan's request to redesignate the Detroit-Ann Arbor area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards.

DATES: *Effective Date:* This rule will be effective August 29, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification EPA–R05–OAR–2011–0673. All documents in these dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for the actions?

On July 5, 2011, MDEQ submitted its request to redesignate the Detroit-Ann Arbor nonattainment area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and for EPA approval of the state's SIP revision containing a maintenance plan for the area. On July 2, 2013, (78 FR 39654), EPA proposed approval of Michigan's redesignation request and plan for maintaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA also proposed approval of Michigan's MVEBs for $PM_{2.5}$ and NO_X for 2023 for the area. Additional background for today's action is set forth in EPA's July 2, 2013, proposed rulemaking.

II. What actions is EPA taking?

EPA has determined that the entire Detroit-Ann Arbor area is attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ standards (78 FR 39654) and that the Detroit-Ann Arbor area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Thus, EPA is approving the requests from the state of Michigan to change the legal designation of the Detroit-Ann Arbor area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also taking several additional actions related to Michigan's $PM_{2.5}$ redesignation requests, as discussed below.

EPA is approving Michigan's $PM_{2.5}$ maintenance plan for the Detroit-Ann Arbor area as a revision to the Michigan SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Detroit-Ann Arbor area in attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS through 2023.

EPA also finds adequate and is approving Michigan's 2023 primary $PM_{2.5}$ and NO_X MVEBs for the Detroit-Ann Arbor area. These MVEBs will be

used in future transportation conformity analyses for the area.

III. What is EPA's response to comments?

EPA received two sets of supportive comments on its proposed rulemaking which have been added to the docket.

IV. Why is EPA taking these actions?

EPA has determined that the Detroit-Ann Arbor area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has also determined that all other criteria have been met for the redesignation of the Detroit-Ann Arbor area from nonattainment to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and for approval of Michigan's maintenance plan for the area. *See* CAA sections 107(d)(3)(E) and 175A. The detailed rationale for EPA's findings and actions is set forth in the proposed rulemaking of July 2, 2013 (78 FR 39654).

V. Final Action

EPA is determining that the Detroit-Ann Arbor area has attained the standards and that the area meets the requirements for redesignation to attainment of that standard under sections 107(d)(3)(E) and 175A of the CAA. Thus, EPA is granting the request from Michigan to change the legal designation of the Detroit-Ann Arbor area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also approving Michigan's 1997 annual and 2006 24-hour $PM_{2.5}$ maintenance plan for the Detroit-Ann Arbor area as a revision to the SIP because the plan meets the requirements of section 175A of the CAA. Finally, EPA finds adequate and is approving Michigan's 2023 primary $PM_{2.5}$ and NO_X MVEBs for the Detroit-Ann Arbor area. These MVEBs will be used in future transportation conformity analyses for the area after the effective date for the adequacy finding and approval.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves Michigan of various requirements for the Detroit-Ann Arbor area. For these reasons, EPA finds good cause under 5 U.S. C. 553(d)(3) for this action to become effective on the date of publication of this action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 these reasons, 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 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 final 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 Commonwealth, 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (*See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 15, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR Parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170 the table in paragraph (e) is amended by adding new entries for "1997 Annual $PM_{2.5}$ Maintenance Plan" and "2006 24-Hour $PM_{2.5}$ Maintenance Plan" at the end of the table to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
1997 Annual $PM_{2.5}$ Maintenance Plan.	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	7/05/2011	8/29/2013 [INSERT CITATION OF PUBLICATION].	
2006 24-Hour $PM_{2.5}$ Maintenance Plan.	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	7/05/2011	8/29/2013 [INSERT CITATION OF PUBLICATION].	

■ 3. Section 52.1173 is amended by adding paragraphs (j) and (k) to read as follows:

§ 52.1173 Control strategy: Particulates.

* * * * *

(j) Approval—The 1997 annual $PM_{2.5}$ maintenance plans for the Detroit-Ann Arbor nonattainment area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties), has been approved as submitted on July 5, 2011. The maintenance plan establishes 2023 motor vehicle emissions budgets for the Detroit-Ann Arbor area of 4,360 tpy for primary $PM_{2.5}$ and 119,194 tpy for NO_X.

(k) Approval—The 2006 24-Hour $PM_{2.5}$ maintenance plans for the Detroit-Ann Arbor nonattainment area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties), has been approved as submitted on July 5, 2011. The maintenance plan establishes 2023 motor vehicle emissions budgets for the Detroit-Ann Arbor area of 16 tpd for primary $PM_{2.5}$ and 365 tpd for NO_X.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.323 is amended by revising the entry for Detroit-Ann Arbor, MI in the tables entitled "Michigan—$PM_{2.5}$ (Annual NAAQS)" and "Michigan—$PM_{2.5}$ (24-Hour NAAQS)" to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—$PM_{2.5}$ (ANNUAL NAAQS)

Designated area	Designation [a]	
	Date [1]	Type
Detroit-Ann Arbor, MI: Livingston County, Macomb County, Monroe County, Oakland County, St. Clair County, Washtenaw County, Wayne County.	8/29/2013	Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

MICHIGAN—$PM_{2.5}$ (24-HOUR NAAQS)

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Detroit-Ann Arbor, MI: Livingston County, Macomb County, Monroe County, Oakland County, St. Clair County, Washtenaw County, Wayne County.	.....	Unclassifiable/Attainment	8/29/2013	Attainment.

MICHIGAN—$PM_{2.5}$ (24-HOUR NAAQS)—Continued

Designated area	Designation for the 1997 NAAQS[a]		Designation for the 2006 NAAQS[a]	
	Date[1]	Type	Date[2]	Type
* * * * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

* * * * *

[FR Doc. 2013–21020 Filed 8–28–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2012–0212, EPA–R05–OAR–2012–0338; FRL–9900–28–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Ohio Portions of the Parkersburg-Marietta and Wheeling Areas to Attainment of the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking several related actions under the Clean Air Act (CAA) affecting the state of Ohio and the Ohio portions of the Parkersburg-Marietta and Wheeling, West Virginia-Ohio areas for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS or standard). EPA is approving requests from the state of Ohio to redesignate the Ohio portions of the Parkersburg-Marietta and Wheeling areas to attainment of the 1997 annual $PM_{2.5}$ standard. EPA is approving, as a revision to the Ohio state implementation plan (SIP), the state's plans for maintaining the 1997 annual $PM_{2.5}$ standard in those areas through 2023. EPA is determining the insignificance of the motor vehicle emission budgets (MVEBs) for purposes of transportation conformity in those areas. EPA is approving the comprehensive inventories submitted by Ohio for the oxides of nitrogen (NO_X), primary $PM_{2.5}$, and sulfur dioxide (SO_2), ammonia and volatile organic compounds (VOC) in the Parkersburg-Marietta area (Washington County), and in the Wheeling area (Belmont County) as meeting the requirements of the CAA. Finally, EPA is determining that the areas continue to maintain the 1997 annual $PM_{2.5}$ standard based on certified 2009–2011 air quality data.

DATES: This final rule is effective August 29, 2013.

ADDRESSES: EPA has established dockets for this action: Docket ID Nos. EPA–R05–OAR–2012–0212 (Parkersburg-Marietta) and EPA–R05–OAR–2012–0338 (Wheeling). All documents in the dockets 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 in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353–8777, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. What is the background for the actions?

On December 2, 2011 (76 FR 75464), EPA issued a final determination that the Parkersburg-Marietta and Wheeling nonattainment areas were attaining the 1997 annual $PM_{2.5}$ standard.

On February 29, 2012, Ohio submitted its request to redesignate the Ohio portion of Parkersburg-Marietta (Washington County) to attainment of the 1997 annual $PM_{2.5}$ standard. On April 16, 2012, Ohio submitted its request to redesignate the Ohio portion of Wheeling (Belmont County) to attainment of the 1997 annual $PM_{2.5}$ standard. These redesignation requests are based on 2008–2010 monitoring data showing attainment of the 1997 annual $PM_{2.5}$ standard.

On November 30, 2012 (77 FR 71383, 77 FR 71371), EPA published notices proposing to approve Ohio's requests to redesignate the Ohio portions of the Parkersburg-Marietta and Wheeling areas to attainment of the 1997 annual $PM_{2.5}$ standard. These rulemaking notices also proposed to approve Ohio's $PM_{2.5}$ maintenance plan, 2005 NO_X, SO_2, and primary $PM_{2.5}$ emission inventories for Washington and Belmont Counties, and proposed to determine the insignificance of the 2022 NO_X and $PM_{2.5}$ MVEBs for Washington and Belmont Counties. These rulemaking notices also proposed to determine that the Ohio portions of the Parkersburg-Marietta and Wheeling areas continue to attain the 1997 $PM_{2.5}$ annual standard based on certified 2009–2011 air quality data. For each proposed action, one supportive comment was received from the Ohio Utility Group, and no adverse comments were received.

On April 30, 2013, Ohio provided ammonia and VOC emissions inventories to EPA to supplement the February 29, 2012, and April 16, 2012, requests for redesignation.

On June 26, 2013 (78 FR 38256, 78 FR 38247), EPA published supplemental notices proposing to determine that the Ohio portions of Parkersburg-Marietta and Wheeling continue to attain the 1997 annual standard and have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA received one supportive comment from the Ohio Utility Group on the supplemental notice for the Ohio

portion of the Wheeling area, and received no adverse comments.

II. What actions is EPA taking?

After reviewing Ohio's redesignation requests, EPA has determined that the requests meet the criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is approving the redesignation of the Ohio portion of the Parkersburg-Marietta area (Washington County) and the Ohio portion of the Wheeling area (Belmont County) to attainment for the 1997 annual $PM_{2.5}$ standard. EPA is also approving Ohio's $PM_{2.5}$ maintenance plans for these areas as a revision to the Ohio SIP based on Ohio's demonstration that the plan meets the requirements of section 175A of the CAA. In addition, EPA is approving the 2005 NO_X, SO_2, and $PM_{2.5}$ emission inventories and 2007/2008 ammonia and VOC emission inventories for Washington and Belmont Counties as meeting the requirement for emission inventories contained in section 172(c)(3) of the CAA. EPA also finds the state's 2022 NO_X and $PM_{2.5}$ MVEBs for Washington and Belmont Counties to be insignificant for purposes of transportation conformity. Finally, EPA is determining that the entire Parkersburg-Marietta and Wheeling areas continue to attain the 1997 annual $PM_{2.5}$ standard based on certified 2009–2011 air quality data.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

III. Statutory and and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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, these actions merely do not impose additional requirements beyond those imposed by State law and the CAA. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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,
- do 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Sulfur dioxide, Ammonia, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: August 12, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1880 is amended by adding paragraphs (p)(3), (p)(4), (q)(3) and (q)(4) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(p) * * *

(3) The Ohio portion of the Parkersburg-Marietta, WV-OH nonattainment area (Washington County), as submitted on February 29, 2012, and supplemented on April 30, 2013. The maintenance plan determines the insignificance of motor vehicle emissions budgets for Washington County.

(4) The Ohio portion of the Wheeling, WV-OH nonattainment area (Belmont County), as submitted on April 16, 2012, and supplemented on April 30, 2013. The maintenance plan determines the insignificance of motor vehicle emissions budgets for Belmont County.

(q) * * *

(3) Ohio's 2005 NO_X, primary $PM_{2.5}$, and SO_2 and 2007/2008 ammonia and VOC emissions inventories satisfy the emission inventory requirements of section 172(c)(3) of the Clean Air Act for Washington County.

(4) Ohio's 2005 NO_X, primary $PM_{2.5}$, and SO_2 and 2007/2008 ammonia and VOC emissions inventories satisfy the emission inventory requirements of section 172(c)(3) of the Clean Air Act for Belmont County.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.336 is amended by revising the entries for Parkersburg-Marietta, WV-OH and Wheeling, WV-OH in the table entitled "Ohio—$PM_{2.5}$ (Annual NAAQS)" to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—$PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * * *		*
Parkersburg-Marietta, WV-OH:		
Washington County	8/29/2013	Attainment.
* * * * * *		*
Wheeling, WV-OH:		
Belmont County	8/29/2013	Attainment.
* * * * * *		*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2013–20660 Filed 8–28–13; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 612

RIN 3145–AA56

Availability of Records and Information

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This document sets forth revisions of the Foundation's regulations under the Freedom of Information Act (FOIA). The revisions implement the provision of the Open FOIA Act of 2009 which amended Exemption 3, update procedural provisions, and allow for multi-track processing of requests.

DATES: The final rule will be effective September 30, 2013.

FOR FURTHER INFORMATION CONTACT: D. Matthew Powell, Assistant General Counsel, Office of the General Counsel, National Science Foundation, telephone 703–292–8060 or email *mpowell@nsf.gov.*

SUPPLEMENTARY INFORMATION: On May 14, 2013 the National Science Foundation (NSF) published a proposed rule at 78 FR 28173 requesting public comment on proposed revisions to its existing FOIA regulations at 45 CFR part 612. No comments were received. Accordingly, NSF is revising its FOIA regulations by adopting the revisions as proposed. This revision of Part 612 implements the provision of the Open FOIA Act of 2009 which amends Exemption 3. It also updates and clarifies several procedural provisions concerning FOIA administration, reflects changes in case law, and includes revised current cost figures for calculating and charging fees. The duplication fee will be reduced. In addition, the Foundation will implement multi-track processing. Clarifications and procedural changes are found at § 612.1(b) (General Provisions); § 612.3(b) and (f) (Requirements for making requests); § 612.5(a), (b), (c) and (d)(3) (Timing of responses to requests); § 612.6(a) (Responses to requests); § 612.7(a)(2), (3) and (5)(iii) (Exemptions); and § 612.10(b)(3), and (c)(1) and (2) (Fees).

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601), the revised rule will not have a significant economic effect on a substantial number of small entities; the rule addresses the procedures to be followed when submitting or responding to requests for records under the Freedom of Information Act. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) the revised rule would not significantly or uniquely affect small

governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. For purposes of Executive Order 12866, the revised rule is not a significant regulatory action requiring review by the Office of Management and Budget. For the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 35) it has been determined that this rulemaking does not impose any reporting or recordkeeping requirement on the public. This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804, and will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 45 CFR Part 612

Administrative practice and procedure; Freedom of information.

For the reasons stated in the preamble, the National Science Foundation amends 45 CFR Chapter VI by revising Part 612 as follows:

PART 612—AVAILABILITY OF RECORDS AND INFORMATION

Sec.

Authority: 5 U.S.C. 552, as amended.

§ 612.1 General provisions.

(a) This part contains the rules that the National Science Foundation (NSF) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Information routinely made available to the public as part of a regular Foundation activity (for example, program announcements and solicitations, summary of awarded proposals, statistical reports on U.S. science, press releases issued by the Office of Legislative and Public Affairs) may be provided to the public without reliance on this part. As a matter of policy, the Foundation also makes discretionary disclosures of records or information otherwise exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy, however, does not create any right enforceable in court. When individuals seek records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, NSF processes those requests under both NSF's Privacy regulations at part 613 of this chapter, and this part.

(b) As used in this part, NSF includes one component, the Office of the Inspector General (OIG) of the National Science Foundation.

§ 612.2 Public reading room.

(a) The Foundation maintains a public reading room located in the NSF Library at 4201 Wilson Boulevard, Suite 225, Arlington, Virginia, open during regular working hours Monday through Friday. It contains the records that the FOIA requires to be made regularly available for public inspection and copying and has computers and printers available for public use in accessing records. Also available for public inspection and copying are current subject matter indexes of reading room records.

(b) Information about FOIA and Privacy at NSF and copies of frequently requested FOIA releases are available online at *www.nsf.gov/policies/foia/jsp*. Most NSF policy documents, staff instructions, manuals, and other publications that affect a member of the public, are available in electronic form through the "Publications" option on the tool bar on NSF's Home Page on the World Wide Web at *www.nsf.gov*.

§ 612.3 Requirements for making requests.

(a) *Where to send a request.* You may make a FOIA request for records of the National Science Foundation by writing directly to the NSF FOIA Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. Requests may also be sent by facsimile to (703) 292–9041 or by email to *foia@nsf.gov*.

The National Science Foundation includes one agency component, the NSF Office of the Inspector General (OIG). For records maintained by the NSF OIG, you may write directly to the Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Suite 1135, Arlington, VA 22230. Requests may also be sent to the OIG by facsimile to (703) 292–9158. The NSF FOIA Officer and the OIG component will also forward requests as appropriate.

(b) *Form of request.* A FOIA request need not be in any particular format, but it must be in writing, include the requester's name and mailing address, and be clearly identified both on the envelope and in the letter, or in a facsimile or electronic mail message as a Freedom of Information Act or "FOIA" request. It must describe the records sought with sufficient specificity to permit identification, and include agreement to pay applicable fees as described in § 612.10. NSF and its OIG component are not obligated to act upon a request until it meets these procedural requirements.

(c) *Personal records.* (1) If you are making a request for records about yourself and the records are not contained in a Privacy Act system of records, your request will be processed only under the FOIA, since the Privacy Act does not apply. If the records about you are contained in a Privacy Act system of records, NSF will respond with information on how to make a Privacy Act request (see NSF Privacy Act regulations at 45 CFR 613.2).

(2) If you are making a request for personal information about another individual, either a written authorization signed by that individual in accordance with § 613.2(f) of this chapter permitting disclosure of those records to you, or proof that that individual is deceased (for example, a copy of a death certificate or a published obituary) will help the agency process your request.

(d) *Description of records sought.* Your request must describe the records that you seek in enough detail to enable NSF personnel to locate them with a reasonable amount of effort. A record must have been created or obtained by NSF and be under the control of NSF at the time of the request to be subject to the FOIA. NSF has no obligation under the FOIA to create, compile, or obtain a record to satisfy a FOIA request. Whenever possible, your request should include specific descriptive information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Foundation will be able to locate those records in response to your request, and the more likely fees will be reduced or eliminated. If NSF determines that your request does not reasonably describe records, you will be advised what additional information is needed to perfect your request or why your request is otherwise insufficient.

(e) *Agreement to pay fees.* Your request must state that you will promptly pay the total fees chargeable under this regulation or set a maximum

amount you are willing to pay. NSF does not charge if fees total less than $25.00. If you seek a waiver of fees, please see § 612.10(k) for a discussion of the factors you must address. If you place an inadequate limit on the amount you will pay, or have failed to make payments for previous requests, NSF may require advance payment (see § 612.10(i)).

(f) *Receipt date.* A request that meets the requirements of this section will be considered received on the date it is properly received by the Office of the General Counsel or the Office of the Inspector General. In determining which records are responsive to a FOIA request, the NSF will include only records in its possession as of the date the NSF or OIG begins its search. If any other date is used, the NSF or OIG shall inform the requester of that date.

(g) *Publications excluded.* For the purpose of public requests for records the term "record" does not include publications which are available to the public in the **Federal Register**, or by sale or free distribution. Such publications may be obtained from the Government Printing Office, the National Technical Information Service, or through NSF's Home Page on the World Wide Web at *http://www.nsf.gov/publications/*. Requests for such publications will be referred to or the requester informed of the appropriate source.

§ 612.4 Processing requests.

(a) *Monitoring of requests.* The NSF Office of the General Counsel (OGC), or such other office as may be designated by the Director, will serve as the central office for administering these regulations. For records maintained by the Office of Inspector General, that Office will control incoming requests made directly or referred to it, dispatch response letters, and maintain administrative records. For all other records maintained by NSF, OGC (or such other office as may be designated by the Director) will control incoming requests, assign them to appropriate action offices, monitor compliance, consult with action offices on disclosure, approve necessary extensions, dispatch denial and other letters, and maintain administrative records.

(b) *Consultations and referrals.* When the NSF receives a request for a record in its possession that originated with another agency or in which another agency has a substantial interest, it may decide that the other agency of the Federal Government is better able to determine whether the record should or should not be released under the FOIA.

(1) If the NSF determines that it is the agency best able to process the record in response to the request, then it will do so, after consultation with the other interested agencies where appropriate.

(2) If it determines that it is not the agency best able to process the record, then it will refer the request regarding that record (or portion of the record) to the agency that originated or has a substantial interest in the record in question (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(3) Whenever NSF refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred, unless such notification would disclose information otherwise exempt.

§ 612.5 Timing of responses to requests.

(a) *In general.* The NSF and its component, OIG, ordinarily will initiate processing of requests according to their order of receipt.

(b) *Multitrack processing.* (1) NSF and OIG may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If NSF or OIG does so, it shall advise requesters in its slower track(s) of the limits of its faster track(s).

(2) NSF or OIG using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the NSF's or OIG's faster track(s). The requester may be contacted by telephone, email, or letter, whichever is more efficient in each case.

(c) *Time for response.* The NSF will seek to take appropriate action within 20 days of when a request is properly received or is perfected (excluding the date of receipt, weekends, and legal holidays), whichever is later. A request which otherwise meets the requirements of § 612.3 is perfected when you have reasonably described the records sought under § 612.3(d), and agreed to pay fees under § 612.3(e), or otherwise met the fee requirements under § 612.10.

(d) *Unusual circumstances.* (1) Where the time limits for processing a request cannot be met because of unusual circumstances, as defined in the FOIA, the NSF FOIA Officer or the OIG component will notify the requester as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten working days.

(2) Where the extension is for more than ten working days, the FOIA Officer or the OIG component will provide the requester with an opportunity either to modify the request so that it may be processed within the ten day extension period or to arrange an agreed upon alternative time period with the FOIA Officer or the OIG component for processing the request or a modified request.

(3) Where the NSF reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(e) *Expedited processing.* (1) If you want to receive expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing.

(2)(i) Requests and appeals will be given expedited treatment whenever it is determined that a requester has demonstrated compelling need by presenting:

(A) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information.

(ii) For example, a requester who is not a full-time member of the news media must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally, and that the information sought has particular value that would be lost if not disseminated quickly.

(3) Within ten calendar days of receipt of a request for expedited processing, the NSF FOIA Officer or OIG component will decide whether to grant it, and will notify the requester of the decision orally or in writing. If a request

for expedited treatment is granted, the request will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 612.6 Responses to requests.

(a) *Acknowledgment of requests.* The NSF or OIG will ordinarily send an email acknowledgment of all FOIA requests with an assigned request number for further reference and an estimated response date.

(b) *Grants of requests.* Once the NSF makes a determination to grant a request in whole or in part, it will notify the requester in writing. The NSF will inform the requester in the notice of any applicable fee and will disclose records to the requester promptly on payment of applicable fees. Records disclosed in part will be marked or annotated to show both the amount and the location of the information deleted where practicable.

(c) *Denials of requests.* (1) Denials of FOIA requests will be made by the Office of the General Counsel, the Office of the Inspector General, or such other office as may be designated by the Director. The response letter will briefly set forth the reasons for the denial, including any FOIA exemption(s) applied in denying the request. It will also provide the name and title or position of the person responsible for the denial, will inform the requester of the right to appeal, and will, where appropriate, include an estimate of the volume of any requested materials withheld. An estimate need not be provided when the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

(2) Requesters can appeal an agency determination to withhold all or part of any requested record; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Act; a disapproval of a fee category claim by a requester; denial of a fee waiver or reduction; or a denial of a request for expedited treatment (see § 612.9).

§ 612.7 Exemptions.

(a) *Exemptions from disclosure.* The following types of records or information may be withholdable as exempt in full or in part from mandatory public disclosure:

(1) *Exemption 1—5 U.S.C. 552(b)(1).* Records specifically authorized and properly classified pursuant to Executive Order to be kept secret in the interest of national defense or foreign policy. NSF does not have classifying authority and normally does not deal with classified materials.

(2) *Exemption 2—5 U.S.C. 552(b)(2).* Records related solely to the internal personnel rules and practices of NSF. Examples of records normally exempt from disclosure include, but are not limited to: Information relating to position management and manpower utilization, such as internal staffing plans, authorizations or controls, or involved in determination of the qualifications of candidates for employment, advancement, or promotion including examination questions and answers.

(3) *Exemption 3—5 U.S.C. 552(b)(3).* Records specifically exempted from disclosure by another statute that either requires that the information be withheld in a such way that the agency has no discretion in the matter; or establishes particular criteria for withholding or refers to particular types of information to be withheld; and, if enacted after the date of enactment of the OPEN FOIA Act of 2009, October 28, 2009, specifically cites to 5 U.S.C. 552(b)(3). Examples of records exempt from disclosure include, but are not limited to:

(i) Records that disclose any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license), 35 U.S.C. 205;

(ii) Contractor proposals not specifically set forth or incorporated by reference into a contract, 41 U.S.C. 253b(m);

(iii) Information protected by the Procurement Integrity Act, 41 U.S.C. 423;

(iv) Statistical information protected by section 14(i) of the NSF Act of 1950, as amended, 42 U.S.C. 1873(i) and/or the Confidential Information Protection and Statistical Efficiency Act of 2002, 44 U.S.C. 3501 note.

(4) *Exemption 4—5 U.S.C. 552(b)(4).* Trade secrets and commercial or financial information obtained from a person, and privileged or confidential. Information subject to this exemption is that customarily held in confidence by the originator(s), including nonprofit organizations and their employees. Release of such information is likely to cause substantial harm to the competitive position of the originator or submitter, or impair the Foundation's ability to obtain such information in the future. NSF will process information potentially exempted from disclosure by Exemption 4 under § 612.8.

Examples of records or information normally exempt from disclosure include, but are not limited to:

(i) Information received in confidence, such as grant applications, fellowship applications, and research proposals prior to award;

(ii) Confidential scientific and manufacturing processes or developments, and technical, scientific, statistical data or other information developed by a grantee;

(iii) Technical, scientific, or statistical data, and commercial or financial information privileged or received in confidence from an existing or potential contractor or subcontractor, in connection with bids, proposals, or contracts, concerning contract performance, income, profits, losses, and expenditures, as well as trade secrets, inventions, discoveries, or other proprietary data. When the provisions of 41 U.S.C. 253b(m) or 41 U.S.C. 423 are met, certain proprietary and source selection information may also be withheld under Exemption 3;

(iv) Confidential proprietary information submitted on a voluntary basis;

(v) Statements or information collected in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(5) *Exemption 5–5 U.S.C. 552(b)(5).* Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NSF. Factual material contained in such records will be considered for release if it can be reasonably segregated and is not otherwise exempt. Examples of records exempt from disclosure include, but are not limited to:

(i) Those portions of reports, memoranda, correspondence, workpapers, minutes of meetings, and staff papers, containing evaluations, advice, opinions, suggestions, or other deliberative material that are prepared for use within NSF or within the Executive Branch of the Government by agency personnel and others acting in a consultant or advisory capacity;

(ii) Advance information on proposed NSF plans to procure, lease, or otherwise acquire, or dispose of materials, real estate, facilities, services or functions, when such information would provide undue or unfair competitive advantage to private interests or impede legitimate government functions;

(iii) Negotiating positions or limits at least until the execution of a contract (including a grant or cooperative agreement) or the completion of the

action to which the negotiating positions were applicable. They may also be exempt pursuant to other provisions of this section;

(iv) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest;

(iv) Records prepared for use in proceedings before any Federal or State court or administrative body;

(vi) Evaluations of and comments on specific grant applications, research projects or proposals, fellowship applications or nominations or other individual awards, or potential contractors and their products, whether made by NSF personnel or by external reviewers acting either individually or in panels, committees or similar groups;

(vii) Preliminary, draft or unapproved documents, such as opinions, recommendations, evaluations, decisions, or studies conducted or supported by NSF;

(viii) Proposed budget requests, and supporting projections used or arising in the preparation and/or execution of a budget; proposed annual and multi-year policy, priorities, program and financial plan and supporting papers;

(ix) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of NSF, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(6) *Exemption 6–5 U.S.C. 552(b)(6).* Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The exemption may apply to protect the privacy of living persons and of living close survivors of a deceased person identified in a record. Information in such files which is not otherwise exempt from disclosure pursuant to other provisions of this section will be released to the subject or to his designated legal representative, and may be disclosed to others with the subject's written consent. Examples of records exempt from disclosure include, but are not limited to:

(i) Reports, records, and other materials pertaining to individual cases in which disciplinary or other administrative action has been or may be taken. Opinions and orders resulting from those administrative or disciplinary proceedings shall be disclosed without identifying details if used, cited, or relied upon as precedent;

(ii) Records compiled to evaluate or adjudicate the suitability of candidates for employment, and the eligibility of individuals (civilian or contractor employees) for security clearances, or for access to classified information;

(iii) Reports and evaluations which reflect upon the qualifications or competence of individuals;

(iv) Personal information such as home addresses and telephone and facsimile numbers, private email addresses, social security numbers, dates of birth, marital status and the like;

(v) The exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personal, private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest.

(7) *Exemption 7–5 U.S.C. 552(b)(7).* Records or information compiled for civil or criminal law enforcement purposes, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may exempt from mandatory disclosure records not originally created, but later gathered, for law enforcement purposes.

(i) This exemption applies only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of the right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, or living close survivors of a deceased person identified in a record;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Federal Government, or a State, local, or foreign agency or authority, or any private institution, that furnished information on a confidential basis; and information furnished by a confidential source and obtained by a criminal law enforcement authority in a criminal investigation;

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) Examples of records normally exempt from disclosure include, but are not limited to:

(A) The identity and statements of complainants or witnesses, or other material developed during the course of an investigation and all materials prepared in connection with related government litigation or adjudicative proceedings;

(B) The identity of firms or individuals investigated for alleged irregularities involving NSF grants, contracts or other matters when no indictment has been obtained, no civil action has been filed against them by the United States, or no government-wide public suspension or debarment has occurred;

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by the NSF Office of the Inspector General.

(iii) The exclusions contained in 5 U.S.C. 552(c)(1) and (2) may also apply to these records.

(8) *Exemption 8–5 U.S.C. 552(b)(8).* Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Exemption 9–5 U.S.C. 552(b)(9).* Records containing geological and geophysical information and data, including maps, concerning wells.

(b) *Deletion of exempt portions and identifying details.* Any reasonably segregable portion of a record will be provided to requesters after deletion of the portions which are exempt. Whenever any final opinion, order, or other materials required to be made available relates to a private party or parties and the release of the name(s) or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following: Names of parties and certain other identifying details have been removed (and fictitious names substituted) in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

§ 612.8 Business information.

(a) *In general.* Business information obtained by the Foundation from a submitter of that information will be disclosed under the FOIA only under this section's procedures.

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

(1) *Business Information* means commercial or financial information obtained by the Foundation from a

submitter that may be protected from disclosure under Exemption 4 of the FOIA and § 612.7(a)(4).

(2) *Submitter* means any person or entity from whom the Foundation obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Foundation will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information.

(e) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Foundation has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* NSF will allow a submitter a reasonable time, consistent with statutory requirements, to respond to the notice described in paragraph (d) of this section. If a submitter has any objection to disclosure, it must submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, must show why the information is a trade secret, or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be a record subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Foundation will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever it decides to disclose business information over the objection of a submitter, the Foundation will give the submitter written notice, which will include:

(1) A statement of the reason(s) why the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) The Foundation determines that the information should not be disclosed (the Foundation protects from disclosure to third parties information about specific unfunded applications, including pending, withdrawn, or declined proposals);

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the Foundation will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Foundation will promptly notify the submitter(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Foundation will notify the requester(s).

§ 612.9 Appeals.

(a) *Appeals of denials.* You may appeal a denial of your request to the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. You must make your appeal in writing and it must be received by the Office of the General Counsel within ten days of the receipt of the denial (weekends, legal holidays, and the date of receipt excluded). You must clearly mark your appeal letter and the envelope or your electronic submission as a "Freedom of Information Act Appeal." Your appeal letter must include a copy of your written request and the denial together with any written argument you wish to submit.

(b) *Responses to appeals.* A written decision on your appeal will be made by the General Counsel. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any denial, you must first appeal it under this section.

§ 612.10 Fees

(a) *In general.* NSF will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. If fees are applicable, NSF will itemize the amounts charged. NSF may collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

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

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because NSF has reasonable cause to doubt a requester's stated use, NSF will provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of

that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or compact disk) among others. NSF will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible by NSF, with reasonable effort, in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use or to promote any particular product or industry, but are sought to further scientific research.

(6) *Representative of the news media or news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but NSF shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news dissemination function of the requester will not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure, for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 612.8, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page by page or line by line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in paper or electronic form or format, or stored in Federal Records Centers. NSF will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, NSF will not search line by line where duplicating an entire document would be quicker and less expensive.

(c) *Fees.* In responding to FOIA requests, NSF will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees will be charged for all requests, other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media, subject to the limitations of paragraph (d) of this section. NSF may charge for time spent searching even if responsive records are not located or are withheld entirely as exempt from disclosure.

(ii) *Manual searches for records.* Whenever feasible, NSF will charge at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) conducting the search. Where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical or all professional/executive), NSF has established an average rate for the range of grades typically involved. Routine search for records by administrative personnel are charged at $5.50 for each quarter hour. When a non-routine, non-clerical search by professional personnel is conducted (for example, where the task of determining which records fall within a request requires professional time) the charge is $11.50 for each quarter hour.

(iii) *Computer searches of records.* NSF will charge at the actual direct cost of conducting the search. This will include the cost of operating the computer system(s) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary (*i.e.*, basic pay plus 16 percent) apportionable to the search. When NSF can establish a reasonable agency-wide average rate for computer operating costs and operator/programmer salaries involved in FOIA searches, the Foundation will do so and charge accordingly.

(iv) *Archived records.* For requests that require the retrieval of records stored by NSF at a Federal records center operated by the National Archives and Records Administration (NARA), additional costs will be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be ten cents per page. For copies produced by computer, such as print outs, tapes, compact disks, or other electronic media, NSF will charge the direct costs, including operator time, of producing the copy. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, NSF will charge the direct costs of that duplication.

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review, in other words, the review done when NSF determines whether an exemption applies to a particular record or record portion at the initial request level. NSF may charge for review even if a record ultimately is not disclosed. No charge will be made for review at the administrative appeal

level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by a change of circumstances. Review fees will be charged at the salary rate (basic pay plus 16%) of the employee(s) performing the review.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media. (2) Except for requesters seeking records for a commercial use, NSF will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(3) Whenever a total fee calculated under paragraph (c) of this section is $25.00 or less for any request, no fee will be charged.

(4) The provisions of paragraphs (d)(2) and (3) of this section work together. This means that noncommercial requesters will be charged no fees unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.00. Commercial requesters will not be charged unless the costs of search, review, and duplication total more than $25.00.

(e) *Notice of anticipated fees in excess of $25.00.* When NSF determines or estimates that the fees to be charged under this section will exceed $25.00, it will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, NSF will advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees exceed $25.00, the request will not be considered perfected and further work will not be done until the requester agrees to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Foundation personnel in order to reformulate the request to meet the requester's needs at a lower cost, if possible. If a requester fails to respond within 60 days of notice of actual or estimated fees with an agreement to pay those fees, NSF may administratively close the request.

(f) *Charges for other services.* Apart from the other provisions of this section, when NSF chooses as a matter of administrative discretion to provide a requested special service such as certifying that records are true copies or sending them by other than ordinary mail, the direct costs of providing the service will be charged to the requester.

(g) *Charging interest.* NSF may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by NSF. NSF may follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where NSF reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the agency may aggregate those requests and charge accordingly. NSF may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, NSF will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i) (2) and (3) of this section, NSF will not require the requester to make an advance payment, -in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where NSF determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged fee to any agency within 30 days of the date of billing, NSF may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before NSF begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which NSF requires advance payment or payment due under paragraph (i)(2) or (3) of this section, the request will not be considered perfected and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, NSF will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where NSF determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, NSF will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. Disclosure of information already in the public domain, in either duplicative or substantially identical form, is unlikely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the

public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. A representative of the news media as defined in paragraph (b)(6) of this section will normally be presumed to satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent as compared to the level of public understanding existing prior to the disclosure. NSF will make no value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, NSF will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. NSF will consider any commercial interest of the requester (with reference to the definition of "commercial use" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. NSF ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request.

§ 612.11 Other rights and services.

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: August 23, 2013.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2013–21053 Filed 8–28–13; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 24, 30, 70, 90, 91, and 188

[Docket No. USCG–2011–0363]

RIN 1625–AC03 (formerly RIN 1625–AB71)

Seagoing Barges

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising several vessel inspection and certification regulations to align them with a statutory definition of "seagoing barge" and with a statutory exemption from inspection and certification requirements for certain seagoing barges. The revisions are intended to eliminate ambiguity in existing regulations, to reduce the potential for confusion among the regulated public, and to help the Coast Guard perform its maritime safety and stewardship missions.

DATES: This final rule is effective September 30, 2013.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0363 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2011–0363 in the "Search" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. William Abernathy, Vessel and Facility Operating Standards Division (CG–OES–2), Coast Guard; telephone 202–372–1363, email *William.J.Abernathy@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

CFR Code of Federal Regulations
DFR Direct final rule
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
U.S.C. United States Code

II. Discussion

The legal basis for this final rule is 46 U.S.C. 3306, which requires the Secretary of Homeland Security to prescribe regulations for Coast Guard-inspected vessels, and Executive Order (E.O.) 12988, Civil Justice Reform, section 3(a), which obligates Federal agencies to eliminate ambiguity in existing regulations. The Secretary's authority under 46 U.S.C. 3306 is delegated to the Coast Guard in Department of Homeland Security Delegation No. 0170.1 paragraph (92.b). The purpose of this final rule is to finalize revisions that are intended to align Coast Guard regulations with current statutory language, thereby eliminating ambiguity that could cause confusion among the regulated public. That ambiguity arose as the result of two

statutory changes that affect how seagoing barges are defined and regulated.

First, seagoing barges were once defined by law as non-self-propelled vessels of 100 gross tons and over that proceed on voyages on the high seas or ocean. In 1983, as part of a comprehensive revision of the shipping statutes in Title 46, U.S. Code, Congress provided a new definition of "seagoing barge" in 46 U.S.C. 2101(32): a non-self-propelled vessel of at least 100 gross tons making voyages beyond the statutorily defined Boundary Line.[1] In 1997, the Coast Guard amended 46 CFR 90.10–36 to align that section's definition of seagoing barge. Nevertheless, two Coast Guard regulations, 46 CFR 90.05–25 and 91.01–10, continue to use the pre-1983 definition. This final rule amends both sections so that they align with 46 U.S.C. 2101(32).

Second, in 1993, Congress added 46 U.S.C. 3302(m) to exempt a seagoing barge from the general 46 U.S.C. 3301(6) requirement for such barges to be Coast Guard inspected and certificated, if the barge is "unmanned" *and* "does not carry" either a "hazardous material as cargo" *or* "a flammable or combustible liquid, including oil, in bulk." It is long-established Coast Guard policy not to require exempt seagoing barges to be inspected or certificated. However, some owners or operators of exempt barges voluntarily request inspection and certification, either unnecessarily and because they are unaware of the section 3302(m) exemption, or as a rational business decision meant to facilitate the barge's anticipated near-term use for non-exempt service. To ensure that these voluntary requests are made with full knowledge of the exemption's availability, this final rule aligns regulatory language with section 3302(m) in eight Coast Guard regulations: 46 CFR 90.05–25 and 91.01–10; and 46 CFR 2.01–7, 24.05–1, 30.01–5, 70.05–1, 90.05–1, and 188.05–1, all of which contain tables that summarize Coast Guard inspection and certification requirements.

On December 14, 2011, the Coast Guard published a direct final rule (DFR) entitled "Seagoing Barges" (76 FR 77712). Following the receipt of an adverse comment on the DFR and pursuant to Coast Guard regulations, 33 CFR 1.05–55, we withdrew the DFR on April 6, 2012 (77 FR 20727). On January 9, 2013, we published a notice of proposed rulemaking (NPRM) entitled "Seagoing Barges" in the **Federal Register** (78 FR 2148). It was substantively identical to the DFR except insofar as it was modified to address the adverse comment. No public meeting on the NPRM was requested and none was held. All prior publications were issued under RIN 1625–AB71.

Two persons commented on the NPRM. The first commenter requested expanding the scope of the rulemaking to include barges operating on the Great Lakes, and asked us to define what is a "manned seagoing barge." We decline to expand the limited aim of this rulemaking, which applies only to seagoing barges, which are defined in 46 U.S.C. 2101(32) as vessels that operate beyond the Boundary Line. The Boundary Line is set at varying distances from the ocean-bound coastline of the U.S. and does not pertain to the Great Lakes. *See* Coast Guard regulations in 46 CFR part 7. We also decline to create a definition for a manned seagoing barge because determining when a seagoing barge is "manned" is a highly fact-specific determination made by the local Coast Guard Officer in Charge, Marine Inspection. As discussed in the NPRM's preamble, 78 FR 2150, col. 1, that fact-specific determination depends on factors cited in 46 CFR 15.501(b): "the applicable laws, the regulations in [46 CFR part 15], and other factors involved, such as: Emergency situations, . . . cargo carried, . . . degree of automation, use of labor saving devices, and the organizational structure of the vessel."

The second commenter requested more detailed discussion in support of our proposed definition of a seagoing barge carrying flammable or combustible liquid, including oil "in bulk." We are amending 46 CFR 90.05–25(a) to define "in bulk" as a quantity equivalent to at least 250 barrels (10,500 gallons). Some regulatory definition of "in bulk" is needed so that barge operators know whether or not they are subject to the 46 U.S.C. 3302(m) exemption. The statute does not provide that definition. However, as we pointed out in the NPRM, 78 FR at 2150, col. 3, Coast Guard policy set the bulk threshold at 250 barrels in 1996. That same policy has been in place without public concern for almost two decades and so the regulatory definition follows current Coast Guard policy.

III. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This final rule aligns 46 CFR 90.05–25, 46 CFR 91.01–10, and the vessel inspection tables in 46 CFR parts 2, 24, 30, 70, 90, and 188 with the current statutory definition of "seagoing barge," ("a non-self-propelled vessel of at least 100 gross tons . . . making voyages beyond the Boundary Line;" 46 U.S.C. 2101(32)), and with the current statutory exemption for seagoing barges from inspection and certification when the barges are unmanned and not carrying hazardous material as cargo, or a flammable or combustible liquid, including oil, in bulk. 46 U.S.C. 3302(m).

As stated above, seagoing barges have been exempt from inspection since 1996, as defined in 46 U.S.C. 3302(m). In the Preliminary Regulatory Analysis for the NPRM, we anticipated that there would be no cost to implement this rule. The benefit of this final rule is eliminating regulatory ambiguity and aligning regulatory language with that of current statutes. We received no public comments that would alter our assessment of the impacts discussed in the NPRM. We received no additional information or data that would alter our assessment of the impacts on industry; therefore, we adopt the Preliminary Regulatory Analysis for the NPRM as final.

[1] 33 U.S.C. 151(b) refers to "identifiable lines dividing inland waters of the United States from the high seas . . . [which] may not be located more than twelve nautical miles seaward of the base line from which the territorial sea is measured. These lines may differ in position for the purposes of different statutes." These lines are defined in 46 U.S.C. 103 as the "Boundary Line." The locations of the Boundary Line for different portions of the U.S. coastline are defined in Coast Guard regulations, 46 CFR part 7.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We received no public comments and received no additional information or data that would alter our assessment of the impacts on small entities as discussed in the NPRM. This final rule will not result in additional costs for small entities because the Coast Guard is aligning the text of the regulations with current statutory language. The Coast Guard currently does not require the inspection of 46 U.S.C. 3302(m)-exempt seagoing barges, so finalizing this rule will impose no additional impacts (costs or cost savings) to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

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

E. Federalism

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

It is well-settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well-settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).*) As noted above, the purpose of this rule is to eliminate existing ambiguities in the regulations in order to clarify how seagoing barges are certificated and inspected. Because the States may not regulate the process of certification and inspection for inspected seagoing barges, nor may they regulate within the categories noted above relating to these barges, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

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

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

M. Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) and (d) of the Instruction. This rule involves amendments to regulations which are editorial or procedural and regulations concerning documentation and inspection of vessels. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 2

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 24

Marine safety.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 2, 24, 30, 70, 90, 91, and 188 as follows:

PART 2—VESSEL INSPECTIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 622, Pub. L. 111–281; 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 2.01–7, Table 2.01–7(a) is revised to read as follows:

§ 2.01–7 Classes of vessels (including motorboats) examined or inspected and certificated.

(a) * * *

TABLE 2.01–7(a)

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2345] or Subchapter K or T—Small Passenger Vessels [234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries.	All vessels >15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 2.01–7(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				
(2) Motor, seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7]	All vessels, including recreational vessels, not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 2.01–7(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(ii) All ferries <100 gross tons carrying more than 6 passengers and all ferries ≥100 gross tons that carry at least 1 passenger. (iii) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger. [7]				
(3) Non-self-propelled vessels <100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk. [5]	(i) All vessels that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel. [7] (E) Carry more than 12 passengers on an international voyage. (F) Carry more than 6 passengers and are ferries.	All manned barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire except those covered by column 3.	None	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151. [1 11 12]

TABLE 2.01–7(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(4) Non-self-propelled vessels ≥100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(iii) All vessels that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] (E) Carry more than 12 passengers on an international voyage. (F) Carry at least 1 passenger and are ferries.	All seagoing barges except a seagoing barge that is covered by column 2 or 3, or that is unmanned for the purposes of operating or navigating the barge, and that carries neither a hazardous material as cargo nor a flammable or combustible liquid, including oil, in bulk quantities of 250 barrels or more.	All barges carrying passengers or passengers-for-hire except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[11 11 12]
(5) Sail [13] vessels ≤700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7]	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 2.01–7(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels.[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels, not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

TABLE 2.01–7(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels.[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6) Sail[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7] (ii) All ferries that carry at least 1 passenger.	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	None	None	All vessels carrying cargoes in bulk that are listed in part 153, Table 1, or part 154, Table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7) Steam, vessels ≤19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that– (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that– (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All tugboats and towboats. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 2.01–7(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels.[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				
(8) Steam, vessels >19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All vessels not covered by columns 2, 3, 6, and 7.	None	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, Table 1, or part 154, Table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 2.01–7(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2345] or Subchapter K or T—Small Passenger Vessels [234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

Key to symbols used in this table: ≤ means less than or equal to; > means greater than; < means less than; and ≥ means greater than or equal to.

Footnotes:

[1] Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

[2] Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171 through 179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

[3] Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter. Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

[4] Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

[5] Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

[7] The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

[8] Boilers and machinery are subject to examination on vessels over 40 feet in length.

[9] Under 46 U.S.C. 441 an oceanographic research vessel ". . . being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, ... Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certified for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

[10] Bulk dangerous cargoes are cargoes specified in table 151.01–10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

[11] For manned tankbarges, see § 151.01–10(c) of this chapter.

[12] See § 151.01–15, 153.900(d), or 154.30 of this chapter as appropriate.

[13] Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

PART 24—GENERAL PROVISIONS

■ 3. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; Pub. L. 103–206; 107 Stat. 2439; E.O. 12234; 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 4. In § 24.05–1(a), Table 24.05–1(a) is revised to read as follows:

§ 24.05–1 Vessels subject to the requirements of this subchapter.

(a) * * *

TABLE 24.05–1(a)

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels.[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries.	All vessels >15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 24.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2345] or Subchapter K or T—Small Passenger Vessels [234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

TABLE 24.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels.[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2) Motor, seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All ferries <100 gross tons carrying more than 6 passengers and all ferries ≥100 gross tons that carry at least 1 passenger. (iii) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels, not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3) Non-self-propelled vessels <100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7]	All manned barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire except those covered by column 3.	None	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[11 12]

TABLE 24.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2345] or Subchapter K or T—Small Passenger Vessels [234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(E) Carry more than 12 passengers on an international voyage. (F) Carry more than 6 passengers and are ferries.				
(4) Non-self-propelled vessels ≥100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(iii) All vessels that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] (E) Carry more than 12 passengers on an international voyage. (F) Carry at least 1 passenger and are ferries.	All seagoing barges except a seagoing barge that is covered by column 2 or 3, or that is unmanned for the purposes of operating or navigating the barge, and that carries neither a hazardous material as cargo nor a flammable or combustible liquid, including oil, in bulk quantities of 250 barrels or more.	All barges carrying passengers or passengers-for-hire except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[11 11 12]
(5) Sail [13] vessels ≤700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 24.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels.[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that– (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels, not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

TABLE 24.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2345] or Subchapter K or T—Small Passenger Vessels [234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6) Sail [13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7] (ii) All ferries that carry at least 1 passenger.	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	None	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7) Steam, vessels ≤19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All tugboats and towboats. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 24.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2345] or Subchapter K or T—Small Passenger Vessels [234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels. [23676]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger.[7]				
(8) Steam, vessels >19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All vessels not covered by columns 2, 3, 6, and 7.	None	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 24.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels.[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

Key to symbols used in this table: ≤ means less than or equal to; > means greater than; < means less than; and ≥ means greater than or equal to.

[1] Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

[2] Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171 through 179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

[3] Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

[4] Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

[5] Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

[7] The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

[8] Boilers and machinery are subject to examination on vessels over 40 feet in length.

[9] Under 46 U.S.C. 441 an oceanographic research vessel ". . . being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, ... Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certified for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

[10] Bulk dangerous cargoes are cargoes specified in table 151.01–10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

[11] For manned tankbarges, see § 151.01–10(c) of this chapter.

[12] See § 151.01–15, 153.900(d), or 154.30 of this chapter as appropriate.

[13] Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

PART 30—GENERAL PROVISIONS

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

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

■ 6. In § 30.01–5, Table 30.01–5(d) is revised to read as follows:

§ 30.01–5 Application of regulations–TB/ALL.

* * * * *

(d) * * *

TABLE 30.01—5(d)

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries.	All vessels >15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 30.01—5(d)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

TABLE 30.01—5(d)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2) Motor, seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All ferries <100 gross tons carrying more than 6 passengers and all ferries ≥100 gross tons that carry at least 1 passenger (iii) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels, not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3) Non-self-propelled vessels <100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7]	All manned barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire except those covered by column 3.	None	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1 11 12]

TABLE 30.01—5(d)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(E) Carry more than 12 passengers on an international voyage. (F) Carry more than 6 passengers and are ferries.				
(4) Non-self-propelled vessels ≥100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(iii) All vessels that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] (E) Carry more than 12 passengers on an international voyage. (F) Carry at least 1 passenger and are ferries.	All seagoing barges except a seagoing barge that is covered by column 2 or 3, or that is unmanned for the purposes of operating or navigating the barge, and that carries neither a hazardous material as cargo nor a flammable or combustible liquid, including oil, in bulk quantities of 250 barrels or more.	All barges carrying passengers or passengers-for-hire except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[11 12]
(5) Sail [13] vessels ≤700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 30.01—5(d)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2 3 4 5] or Subchapter K or T—Small Passenger Vessels[2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels[2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels, not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

TABLE 30.01—5(d)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6) Sail [13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7] (ii) All ferries that carry at least 1 passenger.	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	None	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7) Steam, vessels ≤19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All tugboats and towboats. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 30.01—5(d)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger.[7]				
(8) Steam, vessels >19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All vessels not covered by columns 2, 3, 6, and 7.	None	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 30.01—5(d)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

Key to symbols used in this table: ≤ means less than or equal to; > means greater than; < means less than; and ≥ means greater than or equal to.

Footnotes:

[1] Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

[2] Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171 through 179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

[3] Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

[4] Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

[5] Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

[7] The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

[8] Boilers and machinery are subject to examination on vessels over 40 feet in length.

[9] Under 46 U.S.C. 441 an oceanographic research vessel ". . . being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *. Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certified for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

[10] Bulk dangerous cargoes are cargoes specified in table 151.01–10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

[11] For manned tankbarges, see § 151.01–10(c) of this chapter.

[12] See § 151.01–15, 153.900(d), or 154.30 of this chapter as appropriate.

[13] Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

* * * * *

PART 70—GENERAL PROVISIONS

■ 7. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

■ 8. In § 70.05–1, Table 70.05–1(a) is revised to read as follows:

§ 70.05–1 United States flag vessels subject to the requirements of this subchapter.

(a) * * *

TABLE 70.05—1(a)

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7]	All vessels >15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 70.05—1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger.[7]				

TABLE 70.05—1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2) Motor, seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All ferries <100 gross tons carrying more than 6 passengers and all ferries ≥100 gross tons that carry at least 1 passenger. (iii) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels, not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3) Non-self-propelled vessels <100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7]	All manned barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire except those covered by column 3.	None	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[11 12]

TABLE 70.05—1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(E) Carry more than 12 passengers on an international voyage (F) Carry more than 6 passengers and are ferries.				
(4) Non-self-propelled vessels ≥100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(iii) All vessels that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] (E) Carry more than 12 passengers on an international voyage. (F) Carry at least 1 passenger and are ferries.	All seagoing barges except a seagoing barge that is covered by column 2 or 3, or that is unmanned for the purposes of operating or navigating the barge, and that carries neither a hazardous material as cargo nor a flammable or combustible liquid, including oil, in bulk quantities of 250 barrels or more.	All barges carrying passengers or passengers-for-hire except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1 11 12]
(5) Sail [13] vessels ≤700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 70.05—1(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2345] or Subchapter K or T—Small Passenger Vessels[234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels[23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels, not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

TABLE 70.05—1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6) Sail [13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7] (ii) All ferries that carry at least 1 passenger.	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	None	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7) Steam, vessels ≤19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All tugboats and towboats. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 70.05—1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				
(8) Steam, vessels >19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All vessels not covered by columns 2, 3, 6, and 7.	None	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 70.05—1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				

Key to symbols used in this table: ≤ means less than or equal to; > means greater than; < means less than; and ≥ means greater than or equal to.

Footnotes:

[1] Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

[2] Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171 through 179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

[3] Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

[4] Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

[5] Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

[7] The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

[8] Boilers and machinery are subject to examination on vessels over 40 feet in length.

[9] Under 46 U.S.C. 441 an oceanographic research vessel ". . . being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *. Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certified for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

[10] Bulk dangerous cargoes are cargoes specified in table 151.01–10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

[11] For manned tankbarges, see § 151.01–10(c) of this chapter.

[12] See § 151.01–15, 153.900(d), or 154.30 of this chapter as appropriate.

[13] Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

* * * * *

PART 90—GENERAL PROVISIONS

■ 9. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 10. In § 90.05–1, Table 90.05–1(a) is revised to read as follows:

§ 90.05–1 Vessels subject to requirements of this subchapter.

(a) * * *

TABLE 90.05–1(a)

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2345] or Subchapter K or T—Small Passenger Vessels [234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] (E) Carry more than 6 passengers and are ferries.	All vessels >15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 90.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided; or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger. [7]				
(2) Motor, seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk. [5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade. [7]	All vessels, including recreational vessels, not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts. [12]

TABLE 90.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(ii) All ferries <100 gross tons carrying more than 6 passengers and all ferries ≥100 gross tons that carry at least 1 passenger (iii) These regulations do not apply to— (A) Recreational vessels not engaged in trade (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger.[7]				
(3) Non-self-propelled vessels <100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] (E) Carry more than 12 passengers on an international voyage	All manned barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire except those covered by column 3.	None	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1 11 12]

TABLE 90.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(F) Carry more than 6 passengers and are ferries.				
(4) Non-self-propelled vessels ≥100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(iii) All vessels that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel [7] (E) Carry more than 12 passengers on an international voyage (F) Carry at least 1 passenger and are ferries.	All seagoing barges except a seagoing barge that is covered by column 2 or 3, or that is unmanned for the purposes of operating or navigating the barge, and that carries neither a hazardous material as cargo nor a flammable or combustible liquid, including oil, in bulk quantities of 250 barrels or more.	All barges carrying passengers or passengers-for-hire except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1 11 12]
(5) Sail [13] vessels ≤700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7]	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 90.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew (C) Fishing vessels, not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger. [7]				

TABLE 90.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6) Sail [13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying passengers or passengers-for-hire, except recreational vessels [7] (ii) All ferries that carry at least 1 passenger.	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	None	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7) Steam, vessels ≤19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade [7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All tugboats and towboats. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 90.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2 3 4 5] or Subchapter K or T—Small Passenger Vessels[2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels[2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				
(8) Steam, vessels >19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or	All vessels not covered by columns 2, 3, 6, and 7.	None	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 90.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2345] or Subchapter K or T—Small Passenger Vessels [234]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [25]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [23678]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [23679]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vehicles not engaged in trade (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger. [7]				

Key to symbols used in this table: ≤ means less than or equal to; > means greater than; < means less than; and ≥ means greater than or equal to.

Footnotes:

[1] Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

[2] Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171 through 179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

[3] Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter. Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

[4] Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

[5] Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

[7] The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

[8] Boilers and machinery are subject to examination on vessels over 40 feet in length.

[9] Under 46 U.S.C. 441 an oceanographic research vessel ". . . being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, . . . Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certified for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

[10] Bulk dangerous cargoes are cargoes specified in table 151.01–10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

[11] For manned tankbarges, see § 151.01–10(c) of this chapter.

[12] See § 151.01–15, 153.900(d), or 154.30 of this chapter as appropriate.

[13] Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

* * * * *

■ 11. In § 90.05–25, paragraph (a) is revised to read as follows:

§ 90.05–25 Seagoing barge.

(a) Each seagoing barge, as defined in 46 CFR 90.10–36, is subject to inspection and certification; except that a seagoing barge is exempt from those requirements if it is unmanned for the purposes of operating or navigating the barge, and carries neither a hazardous material as cargo nor a flammable or combustible liquid, including oil, in bulk quantities of 250 barrels or more.

* * * * *

PART 91—INSPECTION AND CERTIFICATION

■ 12. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; 46 U.S.C. Chapter 701; Executive Order 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 13. In § 91.01–10, paragraph (c) is revised to read as follows:

§ 91.01–10 Period of validity for a Certificate of Inspection.

* * * * *

(c) The master or owner of a seagoing barge for which inspection and certification is required by 46 CFR 90.05–25(a), or the master or owner's agent, may apply for a certificate of inspection that is valid for a specific period less than 5 years, or for a specific voyage. The certificate will describe the conditions under which it is issued, and will be endorsed as applying to an unmanned seagoing barge. Paragraph (c) of this section applies if the seagoing barge–

(1) Makes a voyage beyond the Boundary Line for the sole purpose of changing employment; or

(2) Makes a voyage beyond the Boundary Line only infrequently and after doing so returns to its port of departure.

PART 188—GENERAL PROVISIONS

■ 14. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 15. In § 188.05–1, Table 188.05–1(a) is revised to read as follows:

§ 188.05–1 Vessels subject to requirements of this subchapter.

(a) * * *

TABLE 188.05–1(a)

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or	All vessels >15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 188.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 13]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew				

TABLE 188.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger. [7]				
(2) Motor, seagoing motor vessels ≥300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk. [5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade. [7]	All vessels, including recreational vessels, not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts. [12]
	(ii) All ferries <100 gross tons carrying more than 6 passengers and all ferries ≥100 gross tons that carry at least 1 passenger.	(iii) These regulations do not apply to—				
		(A) Recreational vessels not engaged in trade				
		(B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew				
		(C) Fishing vessels not engaged in ocean or coastwise service may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger. [7]				

TABLE 188.05–1(a)

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3) Non-self-propelled vessels <100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel [7] (E) Carry more than 12 passengers on an international voyage (F) Carry more than 6 passengers and are ferries.	All manned barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire except those covered by column 3.	None	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.1 [11 12]
(4) Non-self-propelled vessels ≥100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk[5].	(iii) All vessels that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and is a submersible vessel [7] (E) Carry more than 12 passengers on an international voyage (F) Carry at least 1 passenger and are ferries.	All seagoing barges except a seagoing barge that is covered by column 2 or 3, or that is unmanned for the purposes of operating or navigating the barge, and that carries neither a hazardous material as cargo nor a flammable or combustible liquid, including oil, in bulk quantities of 250 barrels or more.	All barges carrying passengers or passengers-for-hire except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.111.[12]

TABLE 188.05–1(a)

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D–Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(5) Sail [13] vessels ≤700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels[7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels[7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to—	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 188.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation[1]	Vessels inspected and certificated under Subchapter D—Tank Vessels[2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels[2,3,4,5] or Subchapter K or T—Small Passenger Vessels[2,3,4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels[2,5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels[2,3,6,7,8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels[2,3,6,7,9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(A) Recreational vehicles not engaged in trade (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew (C) Fishing vessels, not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				
(6) Sail[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7] (ii) All ferries that carry at least 1 passenger.	All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	None	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7) Steam, vessels ≤19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels[7]	All tugboats and towboats. All vessels carrying dangerous cargoes, when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

TABLE 188.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to— (A) Recreational vessels not engaged in trade (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger. [7]				

TABLE 188.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 3 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(8) Steam, vessels >19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk [5].	(i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade. [7] (ii) All vessels <100 gross tons that— (A) Carry more than 6 passengers-for-hire whether chartered or not, or (B) Carry more than 6 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels [7] (E) Carry more than 6 passengers and are ferries. (iii) All vessels ≥100 gross tons that— (A) Carry more than 12 passengers-for-hire whether chartered or not, or (B) Carry more than 12 passengers when chartered with the crew provided, or (C) Carry more than 12 passengers when chartered with no crew provided, or (D) Carry at least 1 passenger-for-hire and are submersible vessels. [7] (E) Carry at least 1 passenger and are ferries. (iv) These regulations do not apply to—	All vessels not covered by columns 2, 3, 6, and 7.	None	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts. [12]

TABLE 188.05–1(a)—Continued

Method of propulsion, qualified by size or other limitation [1]	Vessels inspected and certificated under Subchapter D—Tank Vessels [2]	Vessels inspected and certificated under Subchapter H—Passenger Vessels [2 3 4 5] or Subchapter K or T—Small Passenger Vessels [2 4 4]	Vessels inspected and certificated under Subchapter I—Cargo and Miscellaneous Vessels [2 5]	Vessels subject to the provisions of Subchapter C—Uninspected Vessels [2 3 6 7 8]	Vessels subject to the provisions of Subchapter U—Oceanographic Vessels [2 3 6 7 9]	Vessels subject to the provisions of Subchapter O—Certain Bulk and Dangerous Cargoes [10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
		(A) Recreational vehicles not engaged in trade. (B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. (C) Fishing vessels not engaged in ocean or coastwise service. Such vessels may carry persons on the legitimate business of the vessel [6] in addition to the crew, as restricted by the definition of passenger.[7]				

Key to symbols used in this table: ≤ means less than or equal to; > means greater than; < means less than; and ≥ means greater than or equal to.

Footnotes:

[1] Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

[2] Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171 through 179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

[3] Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter. Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

[4] Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

[5] Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

[6] Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

[7] The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

[8] Boilers and machinery are subject to examination on vessels over 40 feet in length.

[9] Under 46 U.S.C. 441 an oceanographic research vessel ". . . being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, . . . Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certified for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

[10] Bulk dangerous cargoes are cargoes specified in table 151.01–10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

[11] For manned tankbarges, see § 151.01–10(c) of this chapter.

[12] See § 151.01–15, 153.900(d), or 154.30 of this chapter as appropriate.

[13] Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

* * * * *

Dated: August 12, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2013–20351 Filed 8–28–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 121024581–3714–02]

RIN 0648–BC71

List of Fisheries for 2013

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2013, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2013 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery

on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements. The fishery classifications and list of marine mammal stocks incidentally injured or killed described in the Final LOF for 2012 remain in effect until the effective date of the Final LOF for 2013.

DATES: This final rule is effective September 29, 2013.

ADDRESSES: Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to Stuart Levenback, OMB, by email to *Stuart_Levenbach@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa White, Office of Protected Resources, 301–427–8494; Allison Rosner, Northeast Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Elizabeth Petras, Southwest Region, 562–980–3238; Brent Norberg, Northwest Region, 206–526–6550; Bridget Mansfield, Alaska Region, 907–586–7642; Nancy Young, Pacific Islands Region, 808–944–2282. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the list of fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387(c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362(20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (i.e., frequent incidental mortality and serious injuries of marine mammals).

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (i.e., occasional incidental mortality and serious injuries of marine mammals).

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (i.e., a remote likelihood or no known incidental mortality and serious injuries of marine mammals).

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (e.g., a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

There are several fisheries on the LOF classified as Category II that have no recent documented injuries or mortalities of marine mammals, or fisheries that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995) and listed in the regulatory definition of a Category II fishery, "In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality is "frequent," "occasional," or "remote" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries" (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species or stocks incidentally

killed or injured in each commercial fishery. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports.

In the absence of reliable information on the level of mortality or injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: Changes in gear used, increases or decreases in fishing effort; increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a TRP or a fishery management plan (FMP)). In these instances, NMFS will provide case-specific justification in the LOF for changes to the list of species or stocks incidentally killed or injured.

How does NMFS determine the levels of observer coverage in a fishery on the LOF?

Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including observer coverage in those fisheries. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices may include: Level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources Web site at: *http://www.nmfs.noaa.gov/pr/sars/*. Information on observer coverage levels in Category I and II fisheries can also be found in the Category I and II fishery fact sheets on the NMFS Office of Protected Resources Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/*. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's Web site: *http://www.st.nmfs.gov/st4/nop/*.

How do I find out if a specific fishery is in Category I, II, or III?

This rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S.-authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (e.g., trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a "*" after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008).

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF, the basis for the fishery's initial classification, classification changes to the fishery, changes to the list of species or stocks incidentally killed or injured in the fishery, fishery gear and methods used, observer coverage levels, fishery management and regulation, and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under "How Do I Find Out if a Specific Fishery is in Category I, II, or III?" on the NMFS Office of Protected Resources' Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/*, linked to the "List of Fisheries by Year" table. NMFS plans to develop similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets will take significant time to complete. NMFS anticipates posting Category III fishery fact sheets along with the final 2015 LOF, although this timeline may be revised as this effort progresses.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take

non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register and receive my authorization certificate and injury/mortality reporting forms?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials directly under the MMAP. In the Pacific Islands, Southwest, Northwest, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate and/or injury/mortality reporting forms via U.S. mail or with their state or Federal license at the time of renewal. In the Northeast region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year, but vessel or gear owners must request or print injury/mortality reporting forms by contacting the NMFS Northeast Regional Office at 978–281–9328 or by visiting the Northeast Regional Office Web site (*http://www.nero.noaa.gov/mmap*). In the Southeast region, NMFS will issue vessel or gear owners notification of registry and vessel or gear owners may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at 727–209–5952 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/mm/mmap.htm*) and following the instructions for printing the necessary documents.

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How do I renew my registration under the MMAP?

In Southwest, Alaska, and Northeast regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. In Pacific Islands regional fisheries, vessel or gear owners should receive an authorization certificate by January 1 for state fisheries and with their permit renewal for federal fisheries. In Northwest regional fisheries, vessel or gear owners receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **ADDRESSES**).

In Southeast regional fisheries, vessel or gear owners' registrations are automatically renewed and participants will receive a letter in the mail by January 1 instructing them to contact the Southeast Regional Office to have an authorization certificate mailed to them or to visit the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/mm/mmap.htm*) to print their own certificate.

Am I required to submit reports when I injure or kill a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury; and must be reported. Injury/mortality reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf* or by contacting the appropriate Regional office (see **ADDRESSES**). Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, therefore, vessels too small to accommodate an observer are exempt from this requirement. However, observer requirements will not be exempted, regardless of vessel size, for U.S. Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)). Observer requirements can be found in 50 CFR 229.7.

Am I required to comply with any marine mammal take reduction plan regulations?

Table 4 in this rule provides a list of fisheries affected by TRPs and TRTs. TRP regulations can be found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *http://www.nmfs.noaa.gov/pr/interactions/trt/*. It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, information on each Category I and II fishery, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/lof/*, or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Elizabeth Petras;

NMFS, Northwest Region, 7600 Sand Point Way NE., Seattle, WA 98115, Attn: Brent Norberg, Protected Resources Division;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Bridget Mansfield; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814, Attn: Nancy Young.

Sources of Information Reviewed for the Final 2013 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the SARs for all fisheries to determine whether changes in fishery classification were warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2013 was based, among other things, on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries; stranding data; fishermen self-reports through the MMAP; the final SARs for 2006 (72 FR 12774, March 19, 2007), 2007 (73 FR 21111, April 18, 2008), 2008 (74 FR 19530, April 29, 2009), 2009 (75 FR 12498, March 16, 2010), 2010 (76 FR 34054, June 10, 2011), 2011 (77 FR 29969, May 21, 2012); and 2012 (78 FR 19446, April 1, 2013, 78 FR 32377, May 30, 2013). The SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/*.

Fishery Descriptions

Beginning with the final 2008 LOF (72 FR 66048, November 27, 2007), NMFS describes each Category I and II fishery in the LOF. In each LOF, NMFS describes the fisheries classified as Category I or II that were not classified as such on a previous LOF (and therefore have not yet been described in the LOF). Descriptions of all Category I and II fisheries operating in U.S. waters may be found in the SARs, FMPs, and TRPs, through state agencies, or through the fishery summary documents available on the NMFS Office of Protected Resources Web site (*http://www.nmfs.noaa.gov/pr/interactions/lof/*.) Additional details for Category I and II fisheries operating on the high seas are included in various FMPs, NEPA, or ESA documents.

The "Alaska Bering Sea and Aleutian Islands rockfish trawl" fishery is reclassified from Category III to Category II. Rockfish species fished include Pacific Ocean perch, northern rockfish, rougheye rockfish, shortraker rockfish, and other rockfish. Fishing effort in this fishery takes place in the U.S. Exclusive Economic Zone of the Eastern Bering Sea and the portion of the North Pacific Ocean adjacent to the Aleutian Islands, which is west of 170°W longitude up to the U.S.-Russian Convention Line of 1867. Pacific Ocean perch in the Aleutian Islands is allocated under the Amendment 80 catch share program to the trawl gear sectors. Northern rockfish, rougheye rockfish, shortraker rockfish, and other rockfish do not have directed fisheries but are caught incidentally in other fisheries. There are currently an estimated 28 vessels licensed in this fishery.

Comments and Responses

NMFS received 10 comment letters on the proposed LOF for 2013 (78 FR 23708, April 22, 2013). Comments were received from the Blue Water Fishermen's Association, Bright Eye Fishing Company, Center for Biological Diversity, Hawaii Longline Association, Marine Mammal Commission, Oceana, Inc., Turtle Island Restoration Network, U.S. Department of the Interior, Western Pacific Regional Fishery Management Council, and one individual. Comments on issues outside the scope of the LOF were noted, but generally without response.

General Comments

Comment 1: An individual commenter requests that NMFS explicitly state what years of data are used in LOF analyses, specifically in the vessels/persons and other tables where dates are not provided, to make the information more clear and useful.

Response: In the preamble, NMFS states the years of the data used in the LOF review. NMFS used the best available data for each stock. In this rule for 2013, we used data from 2006–2010. The majority of data used come from the SARs, which are updated annually. In the SARs, the dates of the data used are stated. Other best available data sources include: Observer data, stranding data, and fisher self-reports. In the vessels/persons tables the most current federal and state commercial fisheries data are used. References to specific data sources are included in the proposed 2013 LOF rule (78 FR 23708, April 22, 2013) "Summary of Changes to the LOF for 2013" section.

Comment 2: The Marine Mammal Commission (Commission) recommends that NMFS work in collaboration with the states to develop reliable methods for estimating the number of participants in fisheries.

Response: As stated in the Final 2012 LOF (76 FR 73912, November 29, 2011), Table 2 represents a description of each fishery including the estimated number of persons/vessels active in the fishery. Currently, a clear measure of effort for all state fisheries has not been determined due to the way some state permits allow for the use of multiple gear types. As stated in the proposed 2013 LOF (78 FR 23708, April 22, 2013), NMFS recognizes that there may be disparity between permit holders listed and actual fishing effort; however, the numbers provided on the LOF are solely used for descriptive purposes and will not be used in determining future management of fisheries, observer coverage designations, or bycatch rates, which are all done through other processes that include public comment periods. Further, NMFS has communicated with the states regarding the need for consistent fishing effort data collection methods across states to better assess fisheries' effects on marine mammal stocks that have interstate distributions. NMFS will continue to communicate this need through TRT processes, LOF yearly inquiries, and the Marine Mammal Authorization Program's (MMAP's) integrated registration process and will work with states to improve the accuracy of these estimated numbers of vessels/persons.

Comment 3: The Center for Biological Diversity (CBD) requests that NMFS not reclassify fisheries to a lower category or remove marine mammals from the list when information on the fishery and its interactions is scant.

Response: As stated in the Final 2012 LOF (76 FR 73912, November 29, 2011), NMFS considers a broad range of information when proposing or making fishery classification decisions on the LOF and does not classify fisheries based solely on the presence or absence

of serious injuries or mortalities. Under the implementing regulations for section 118, NMFS uses observer data, logbook data, stranding data, fishers' reports, anecdotal reports, qualitative factors outlined in 50 CFR 229.2 (i.e., fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area), information on incidental serious injury or mortality to marine mammals reported in SARs (50 CFR 229.2; 60 FR 45086, August 30, 1995; 60 FR 67063, December 28, 1995), and input received during the public comment periods. NMFS considers all of this information to determine whether the fishery can be classified on the LOF based on quantitative information analyzed through the Tier 1 and 2 analyses; or whether the fishery can be classified on the LOF based on the qualitative information outlined in NMFS regulations at 50 CFR 229.2.

Comment 4: The CBD recommends that NMFS be more transparent about the statistical reliability of bycatch estimates. The CBD reiterated an old Commission recommendation that NMFS include observer coverage for each fishery on the List of Fisheries, including Category III fisheries, to allow the reader to assess the adequacy of information on incidental mortality and serious injury to marine mammals. CBD recommends adding a column with observer coverage to the first table in the proposed rule that lists each fishery and the estimated number of participants.

Response: NMFS agrees with CBD's comment referencing the Commission's comment from the Final 2012 LOF (76 FR 73916, November 29, 2011, comment/response 2), that summarizing the information used as the basis to classify each fishery on the LOF in one location could be useful for interested readers. NMFS has posted information on each Category I and II fishery on the LOF on the NMFS Office of Protected Resources Web site (*http://www.nmfs.noaa.gov/pr/interactions/lof/*), where it can be considered at the readers' discretion. NMFS is developing similar fishery fact sheets for each Category III fishery and anticipates posting those fishery fact sheets along with the final 2015 LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, this timeline may be revised as this effort progresses.

Comment 5: The CBD opposes the inclusion of aquaculture operations as Category III fisheries and recommends that they be managed under MMPA Section 101(a)(5)(A) through (D) with take prohibitions and permits.

Response: As stated in the Final 2012 LOF (76 FR 73912, November 29, 2011), NMFS works under Section 118 of the MMPA which governs the "taking of marine mammals incidental to commercial fishing operations." The MMPA does not provide a definition of a commercial fishing operation; therefore, NMFS defined "commercial fishing operation" in regulations at 50 CFR 229.2. The definition was presented in the proposed and final rules implementing the regulations for section 118 of the MMPA (60 FR 31666, June 16, 1995; 60 FR 65086, August 30, 1995). As noted in those proposed and final rules, and in the responses to comments on the 2009, 2010 and 2012 LOFs (73 FR 73032, December 1, 2008, comment/response 5; 74 FR 58859, November 16, 2009, comment/response 11; 76 FR 73916, November 29, 2011, comment/response 3), the definition of a "commercial fishing operation" includes aquaculture. The regulations in 50 CFR 229.2 define a "commercial fishing operation" as "the catching, taking, or harvesting of fish from the marine environment . . . : The term includes . . . aquaculture activities." Further, "fishing or to fish" is defined as "any commercial fishing operation." Therefore, aquaculture fisheries are considered commercial fisheries that are managed under section 118 of the MMPA and are therefore included on the annual LOF.

Comment 6: The Commission recommends that NMFS include in the 2014 LOF the estimated fishing effort, number of participants, and sources of the estimates (e.g., number of active participants, number of licensed vessels/persons, number of vessels/persons in previous LOFs, or other).

Response: Section 118 (c)(1) of the Marine Mammal Protection Act states that the Secretary shall include "the approximate number of vessels or persons actively involved in, each such fishery." Each year NMFS provides updates on the estimated fishery participants as indicated in Table 2. NMFS provides a description of the sources of this information in each proposed rule when changes to the LOF are proposed. NMFS describes why these numbers may reflect potential industry participation and not necessarily active permit holders. Providing additional information on active participants, as requested by the commenter, may be possible for federal and some state permit/license holders. However, it is not currently available for many state fisheries.

NMFS requests state permit holder data from state agencies through the MMAP integrated registration process. At that time, NMFS provides state officials with the MMPA Category I & Category II fishery definitions. State representatives, being experts in their fisheries, then assign their state fisheries to the most appropriate LOF fishery when responding to NMFS's annual request for permit holder information. In some cases, a permit holder may have the potential to use a particular gear type, though they may not be actively participating. NMFS has interpreted Table 2 to represent an estimation of "potential participation" in a fishery, and each year provides specific language that explains that these numbers represent estimates and not actual effort for certain fisheries. NMFS will strive to include the requested additional information of estimated fishing effort, number of participants, and sources of estimates in the fishery fact sheets that are available on the NMFS Office of Protected Resources Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/*.

Comments on Commercial Fisheries in the Pacific Ocean

Comment 7: The Commission recommends that NMFS elevate the Hawaii charter and Hawaii trolling, rod and reel fisheries to Category II and initiate observer coverage to obtain data necessary to rigorously assess the risk the fisheries pose to the Hawaii stock of pantropical spotted dolphins. The Commission states that NMFS's conclusions regarding total commercial fishery-related mortality and serious injury of Hawaiian pantropical spotted dolphins are based on a series of observations that are not sufficient to assess the takes from the fisheries. The Commission also disagrees with NMFS's conclusion that, "in the absence of evidence of mortality/serious injury . . . a Category III classification . . . is appropriate," for it shifts the burden of proof away from fishery management and removes the incentive to collect data needed to characterize the level of take.

Response: NMFS is retaining the Hawaii charter and Hawaii trolling, rod and reel fisheries as Category III fisheries. As described in the proposed rule (78 FR 23708, April 22, 2013), NMFS does not have a quantitative estimate of the number of mortalities and serious injuries of pantropical spotted dolphins in the fisheries. In the absence of that data, consistent with 50 CFR 229.2, NMFS considers other factors to assess the risk to the dolphins, including fishing techniques, gear used,

methods used to deter marine mammals, target species, seasons and areas fished, qualitative data, stranding information, and other relevant information on marine mammals. We have evaluated the available information, which is summarized in the proposed rule, and determined that incidental mortalities and serious injuries are likely rare, rather than "occasional"; and, thus, a Category III classification is warranted.

NMFS has the authority to place observers on Category III vessels under certain circumstances and to develop an alternative observer program to collect data on commercial fishing operations via other platforms (e.g., vessels, airplanes, points on shore) (50 CFR 229.7). Although NMFS is not initiating observer coverage for the troll and charter vessel fisheries at this time, we will continue to work with the State of Hawaii and with independent researchers to collect and evaluate information on the interaction between the fisheries and dolphins.

Comment 8: The Western Pacific Regional Fishery Management Council concurs with NMFS that the Hawaii charter and Hawaii trolling, rod and reel fisheries should remain Category III.

Response: NMFS acknowledges this comment and is finalizing the Hawaii charter and Hawaii trolling, rod and reel fisheries' proposed Category III classification.

Comment 9: The CBD opposes the removal of humpback whales (Central North Pacific stock) and Blainville's beaked whales (Hawaiian stock) from the list of species or stocks incidentally killed or injured in Category I Hawaii deep-set longline fishery. The CBD provides three reasons for retaining the species on the list. First, effort in the fishery increased from 2010 to 2011, and interactions with marine mammals will increase with the additional effort. As a result, NMFS should not now remove these species. Second, 20% observer coverage means there is a quantifiable risk that some interactions are unobserved and unreported, especially for the endangered humpback whale, NMFS should consider more than the most recent five years of data before removing a species historically taken by the fishery. Third, excluding marine mammals based solely on a lack of documented injuries or deaths in the most recent 5-year period is inconsistent with NMFS policy and prior practice. For example, NMFS just added Blainville's beaked whales on the 2012 LOF as an acknowledgment of the great uncertainty in identifying species and stocks taken in this fishery outside the U.S. EEZ. Therefore, the removal from the list on the basis of information for the most recent five-year period seems contradictory to what NMFS decided in listing them.

Response: NMFS is removing the two stocks from the list of species and stocks injured or killed in the Category I Hawaii deep-set longline fishery, as proposed. Responses to each of the CBD's three arguments are set forth below.

First, although the number of fishing sets in the Hawaii deep-set longline fishery has increased somewhat from 2010 to 2011 (Pacific Islands Fisheries Science Center, Fisheries Monitoring Branch, 2012), this fact alone does not indicate that there was or will be an increase in marine mammal interactions. The Hawaii deep-set fishery operates under a limited entry system, with the number of vessels remaining relatively constant over the past ten years. NMFS is removing these two marine mammal species/stocks because they have not been observed to be caught in the fishery in the most recent five years of data included in this analysis (2006–2010). NMFS will continue to update the list in future LOFs to reflect the best available data on observed interactions.

Second, in fisheries where observer coverage is inadequate, NMFS may retain species and stocks on the list for longer than five years, on a case-by-case basis. In the Hawaii deep-set longline fishery, NMFS is satisfied that existing observer coverage (20%) is sufficient to detect even rare marine mammal bycatch events, particularly when data are pooled across multiple years. Therefore, NMFS is relying on observer data to inform the list of species injured or killed in the fishery.

Third, NMFS considers these changes to the list of species injured or killed to be consistent with our policy and prior practice. The CBD's discussion of the addition of the Blainville's beaked whale to the list contains factual errors that we clarify below. The Hawaiian stock of Blainville's beaked whale has been included on the list of species injured/killed in the Hawaii deep-set longline fishery since the 2009 LOF (and in the Hawaii longline fishery on the 2006–2008 LOFs before the Hawaii deep- and shallow-set longline fisheries were split). The most recently observed interaction with a Blainville's beaked whale in the deep-set fishery was a non-serious injury on the high seas in 2005. In the 2012 LOF, NMFS added an "unknown" stock of Blainville's beaked whale to the high-seas component of the fishery (Table 3—Western Pacific Pelagic (Hawaii Deep-set component)) to account for the uncertainty in stock (not species) identification on the high seas given that the full offshore ranges of Hawaiian pelagic cetacean stocks are unknown. Accordingly, the addition of this "unknown" stock was meant to account for the inherent uncertainty in identifying whether the animals are from the Hawaiian pelagic stocks or from other high seas stocks and not because of additional observed takes within the time period considered for the 2012 LOF (2005–2009). More recent data indicate there have been no observed interactions with Blainville's beaked whales in the most recent 5-year period (2006–2010); and, thus, the removal of the species (including both the Hawaiian and unknown stocks) is appropriate.

Comment 10: The CBD continues to have concern over NMFS's lack of assessment and analysis of fisheries' impacts on Hawaiian monk seals. The CBD stated that, given the critically endangered status of the monk seal, any interaction is significant and any fishing mortality would qualify a fishery as Category I if NMFS calculated the potential biological removal (PBR) level. Continuing to rely on the fact that the PBR level for monk seals is "undetermined" to justify NMFS's failure to make a quantitative evaluation of incidental mortality and serious injury compared to PBR evades the intent and legal mandates of the MMPA.

Response: NMFS expects that the great majority of fisheries' interactions with Hawaiian monk seals occur in the main Hawaiian Islands (MHI), where coastal and recreational fisheries primarily operate. Currently, NMFS is only able to estimate the minimum number of fisheries' interactions based on opportunistic reporting by the public. Reports about interactions coming directly from fishermen are rare. A majority of those reported interactions are hookings (serious injury). However, notwithstanding these fisheries interactions, NMFS is encouraged that the monk seal population in the MHI continues to increase, with an estimated intrinsic population growth rate of 6.5% per year (Baker *et al.*, 2011).

NMFS is unable to reliably determine whether an interaction (i.e., hooking) occurred in a commercial or recreational fishery, primarily for two reasons. First, when a seal is sighted with a hook, it is often difficult to determine the fishery of origin, even if the hook or other gear is recovered from the animal. Second, many Hawaiian fisheries have both commercial and non-commercial components. As a result, even if the fishery can be identified from the recovered gear, it may be difficult to verify whether the interaction occurred during commercial fishing (and would

thus be evaluated on the LOF). This issue will not be resolved without improved information and reporting by fishermen.

NMFS continues to try to improve its data collection, analysis and assessment of fisheries' interactions and their impacts on Hawaiian monk seals. NMFS is currently working with state and private partners to address some of these limitations in data and reporting. Some examples include:

- The NMFS Pacific Islands Fisheries Science Center Hawaiian Monk Seal Research Program (HMSRP) partners with the State of Hawaii to better quantify and describe potential monk seal interactions with fisheries in order to develop mitigation strategies.
- The HMSRP is conducting a community-based research project using National Geographic Crittercams to look at the seals' foraging behavior and fisheries interactions. This project allows fishermen to take part in the research and has a substantial community engagement component educating the fishing community about seals and encouraging reporting.
- The NMFS Pacific Islands Regional Office develops outreach products and messages to inform fishermen about best practices when fishing around monk seals and how to report interactions.
- Several Federal, State, and non-governmental organization liaisons are working with various fishing communities to encourage better reporting of monk seal interactions.

NMFS will continue to work with its state and federal partners and the public to better understand, quantify, and reduce monk seal-fishery interactions.

Comment 11: The Hawaii Longline Association (HLA) argues that the Hawaii-based deep-set longline fishery does not interact with MHI insular false killer whales and opposes including the stock on the list of marine mammals injured or killed in the deep-set fishery.

Response: NMFS determines which species or stocks are included as incidentally killed or injured in a fishery by annually reviewing the information presented in the current SARs, among other relevant sources. The SARs are based on the best available scientific information and provide the most current and inclusive information on each stock, including range, abundance, PBR, and level of interaction with commercial fishing operations. The LOF does not analyze or evaluate the data and calculations contained within the SARs.

The 2012 SAR for false killer whales indicates that an average of 0.5 mortalities or serious injuries of MHI insular false killer whales occur each year incidental to the Hawaii-based deep-set longline fishery (Carretta *et al.*, 2013). Therefore, NMFS is retaining the stock on the list of marine mammal stocks incidentally killed or injured in the Hawaii deep-set longline fishery. For a more complete analysis of the methodology for determining mortality and serious injury of MHI insular false killer whales, the commenter is referred to the 2012 SAR.

Comment 12: The HLA opposes NMFS's inclusion of a number of "unknown" marine mammals stocks on the list of species or stocks injured or killed in the deep-set and shallow-set fisheries and states it is in violation of the MMPA.

Response: The listings of "unknown" stocks are for species that have been observed to have been taken by the Hawaii-based deep-set and shallow-set longline fisheries on the high seas, but for which the stock identity could not be reliably determined. NMFS' SARs for Hawaii pelagic cetacean stocks note that the stocks' ranges extend into the high seas, but the full offshore ranges are unknown. For those animals taken by the longline fisheries on the high seas, NMFS is often unable to determine whether the animals belong to the Hawaii pelagic stocks or other high seas stocks. This is particularly true for takes that occur far outside the U.S. EEZ around the Hawaiian Islands. Therefore, NMFS' inclusion of "unknown" stocks that are known to interact with the longline fisheries on the high seas is necessary to account for uncertainty in stock identification.

Comment 13: The HLA opposes NMFS adding short-finned pilot whales to the list of species injured or killed in the Hawaii shallow-set longline fishery because it is not supported by the available data. The addition is based on a single interaction on the high seas involving an unidentified cetacean that "may have" been a short-finned pilot whale. In the absence of data confirming that the fishery is interacting with short-finned pilot whales, NMFS may not add the species to the list of species or stocks that are incidentally killed or injured by the fishery.

Response: One unidentified cetacean, known to be either a false killer whale or short-finned pilot whale (i.e., a "blackfish"), was observed seriously injured in the shallow-set longline fishery on the high seas in 2008. When the species of a blackfish cannot be positively identified, NMFS prorates the interaction to one species or the other based on distance from shore (McCracken, 2010). Proration of unidentified blackfish takes accounts for uncertainty in the bycatch estimates and until all animals taken can be identified to either species (e.g., photos, tissue samples). This approach constitutes the best available information and ensures that potential impacts to all species and stocks are assessed. Based on this approach, the estimated average annual mortality and serious injury of short-finned pilot whales in the fishery is 0.1 (McCracken, 2011). Therefore, NMFS is adding the short-finned pilot whale to the list of species or stocks that are incidentally killed or injured by the fishery, as proposed.

Comment 14: The HLA concurs with NMFS's proposed removals from the list of species and stocks that interact with the Hawaii-based longline fisheries.

Response: NMFS acknowledges this comment and is finalizing the list of species and stocks interacting with the Hawaii deep- and shallow-set longline fisheries as proposed. As stated in the proposed rule (78 FR 23708, April 22, 2013), the changes reflect the most recent five years of data (2006–2010) on observed marine mammal interactions in the fisheries.

Comment 15: The Turtle Island Restoration Network (TIRN) recommends that NMFS add pygmy killer whales to the list of species/stocks incidentally killed or injured in the Hawaii deep-set longline fishery based on one observed take in the first quarter of 2013.

Response: The 2013 LOF does not yet incorporate the recently observed pygmy killer whale interaction. The observed interaction has not yet been included in any bycatch estimate, and has not yet been evaluated as part of the tier analysis for this fishery. This observed take will be evaluated in a future LOF.

Comment 16: The Commission concurs with NMFS's proposed reclassifications of the Bering Sea Aleutian Islands (BSAI) rockfish trawl fishery from Category III to Category II, the BSAI Pacific cod longline fishery from Category II to Category III, and the Alaska Bering Sea sablefish pot fishery from Category II to Category III.

Response: NMFS acknowledges this comment and is finalizing the fishery reclassifications.

Comment 17: The U.S. Department of the Interior (DOI) concurs with NMFS that the Southwestern Alaska stock of northern sea otter is incidentally taken in the AK Kodiak salmon set gillnet fishery, the South Central Alaska stock of northern sea otter is incidentally taken in the Alaska Prince William Sound salmon drift gillnet fishery, and the Pacific walrus is incidentally taken in the Alaska BSAI flatfish trawl fishery.

Response: NMFS acknowledges this comment and is finalizing the changes to the list of species injury or killed in these fisheries as proposed.

Comment 18: NMFS received four comment letters supporting the reclassification of the CA thresher shark and swordfish drift gillnet fishery. All of the commenters concurred with the proposed elevation to Category I, the addition of the CA/OR/WA stock of sperm whales to the list of species or stocks incidentally killed or injured in this fishery, and that interactions with this stock provide the basis for the elevation in classification.

Response: NMFS acknowledges this comment and is finalizing the CA thresher shark and swordfish drift gillnet fishery reclassification from Category II to Category I.

Comment 19: NMFS received three comment letters about species injured and killed in the CA swordfish and thresher shark drift gillnet fishery. All commenters requested that NMFS add minke whales to the list of species incidentally killed or injured in the CA swordfish and thresher shark drift gillnet fishery. One letter suggested that NMFS consider whether these takes exceeded PBR.

Response: In the proposed 2013 LOF (78 FR 23708, April 22, 2013), NMFS relied on information available through 2010. When the proposed 2013 LOF was drafted, the best available information on the fisheries and marine mammal interactions was through 2010. The available information included assessments of observed interactions and serious injuries as well as extrapolations of the observed interactions of commercial fisheries and marine mammals (Carretta and Enriquez, 2012). A minke whale interaction was observed in the CA swordfish and thresher shark drift gillnet fishery in 2011 (Carretta and Enriquez, 2012). This information, as well as other fishery activities through 2011, will be reviewed and included in the 2014 LOF, as appropriate.

Comment 20: DOI concurs with NMFS that the CA (southern) sea otters be listed as incidentally taken in the CA halibut/white seabass and other species set gillnet fishery. The DOI recommends that NMFS add CA sea otters to CA coonstripe, shrimp, rock crab, tanner crab pot or trap and CA spiny lobster fisheries lists.

Response: NMFS received a similar comment for the proposed 2012 LOF (76 FR 73912, November 29, 2011, comment/response 9) as well as 2011 LOF (75 FR 68475, November 8, 2010) and 2010 LOF (74 FR 58859, November 16, 2009). As described in the response to comments in the final 2012 LOF (76 FR 73912, November 29, 2011) and described in detail in the proposed 2009 LOF (73 FR 33760, June 13, 2008), NMFS conducted an extensive review of all available information on marine mammal interactions with pot/traps gear in 2008. Also in 2008, the U.S. Fish and Wildlife Service (USFWS) completed a stock assessment for southern sea otters. As described in the 2008 SAR and 2009 LOF, there have been four sea otters that are known to have died in pot/trap gear in California and all occurred in 1987 and 1991. The U.S. Geological Survey and California Department of Fish and Game (now California Department of Fish and Wildlife) collaborated on observing finfish traps in California, but did not record any sea otter interactions (Carretta *et al.*, 2009). The USFWS, as part of public comments for the 2012 LOF, submitted a paper by Hatfield et al. (2011), detailing experiments that indicate that sea otters can enter and become entrapped in pots or traps with openings of certain sizes. However, the paper presented no evidence of this occurring during commercial fishing activities off California. The possibility of an interaction is insufficient justification to include southern sea otters on the list of species incidentally injured or killed in the CA coonstripe shrimp, rock crab, tanner crab pot or trap or the CA spiny lobster trap fisheries. Instead, NMFS needs some indication that injuries or mortalities are occurring or have occurred in these fisheries in recent years (e.g., fisher self-reports, observer data, stranding data). If additional information becomes available to indicate that southern sea otters have been injured or killed in CA trap/pot fisheries in recent years, NMFS will consider including this species on the LOF at that time.

Comments on Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Comment 21: The Blue Water Fishermen's Association recommends that NMFS divide the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery for swordfish, tuna, and sharks into three regional fisheries. The Atlantic and Caribbean should be divided at the Georgia/Florida state line into north and south Atlantic regions and the Gulf of Mexico should be a third region.

Response: NMFS disagrees that the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery should be divided into three regions. Gear used throughout the large pelagics longline fishery is relatively the same, and marine mammal stocks have the potential to interact with this gear across all geographic regions. For example, other Southeast fisheries including the Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot fishery; the Atlantic mixed species trap/pot fishery; the Southeastern U.S. Atlantic Gulf of Mexico shrimp trawl fishery; and the Mid-Atlantic gillnet fishery are all grouped together based on similar gear types, despite slight regional differences in fishing techniques or the marine mammal stocks affected. Furthermore, even though the pelagics longline fishery is grouped over geographic regions for LOF purposes, management measures to reduce serious injuries and mortalities of marine mammals for the fishery are already focused on geographic areas where interactions pose a significant risk to specific marine mammal stocks, rather than implementing broad-brush regulations that span over large areas with different variations of interactions.

Comment 22: The Blue Water Fishermen's Association recommends that NMFS support research efforts to better understand depredation by marine mammals on hooked catches, specifically pilot whale interactions.

Response: NMFS agrees with the Blue Water Fishermen's Association that research efforts are important to reduce marine mammal interactions. The LOF does not include any funding mechanisms to support research efforts. However, we are supporting research efforts to better understand how to reduce or prevent serious injuries and mortalities of marine mammals in the Atlantic portion of the pelagic longline fishery. Specifically, we are providing funding through North Carolina Sea Grant for cooperative research between scientists and fishermen to better understand pilot whale interactions with the pelagic longline fishery as described in the Pelagic Longline Take Reduction Plan. In addition, we are supporting two research projects in 2013 to evaluate the potential of weak hooks for reducing serious injury and mortality of marine mammals, while maintaining catch for fishermen.

Comment 23: DOI recommends that NMFS delete the superscript reference about the level of interaction with the Atlantic blue crab trap/pot fishery for the Florida subspecies of the West Indian manatee because it is erroneous. The reference reads, "[F]ishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category 1) or greater than 1 percent and less than 50 percent (Category II) of the stock' s [potential biological removal] PBR."

Response: NMFS believes that the footnote regarding the level of interaction between the Atlantic blue crab trap/pot fishery and the Florida subspecies of West Indian manatee is relevant. This reference is included for any stock listed under a fishery that has data showing that serious injuries and mortalities are greater than 1 percent and less than 50 percent (Category II) of the stock's PBR. In NMFS preliminary data, the PBR for the West Indian manatee was 14.98, and three serious injuries were reported in Atlantic blue crab pot gear, 20% of the stock's PBR. Based on this information, NMFS finds the footnote to be accurate and will maintain the footnote reference for the Florida subspecies of manatee.

Comment 24: DOI recommends that NMFS remove the Florida subspecies of the West Indian manatee from the list of species/stocks incidentally killed or injured in the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery. DOI is unaware of any manatees taken in this fishery since 1990.

Response: Notwithstanding the record of historic takes and low observer coverage since 1992 (less than 1%), NMFS will remove the Florida subspecies of the West Indian manatee from the list of species/stocks incidentally killed or injured in the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery since there have been no recently documented takes. Further, the Georgia Department of Natural Resources and Florida Fish and Wildlife Conservation Commission closely monitor the manatee population, which allows them to detect the majority of dead and injured animals. The last known takes of manatees by trawl gear were in 1997, as presented in the 2009 SAR (74 FR 69136, December 30, 2009). Two takes were reported that year from Georgia waters. One of the takes was lethal; the other was non-lethal. Also, in 1990, the inshore bait shrimp fishery was suggested to cause three unconfirmed manatee mortalities. The manatee carcass salvage and recovery program at the Florida Fish and Wildlife Conservation Commission coordinates carcass salvage to determine the cause of death of every reported dead manatee (up to 400 manatees a year) (Florida Fish and Wildlife Conservation Commission, 2007). In Georgia, the Department of Natural Resources works closely with the state of Florida and U.S. Fish and Wildlife Service to monitor impacts to manatees.

Comment 25: The Commission recommends that NMFS elevate the Atlantic, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery and all other fisheries that could be responsible for observed takes of bottlenose dolphins from Category III to Category II until NMFS can reliably attribute the takes to a specific fishery(s).

Response: NMFS is currently reviewing all Category III fisheries and associated data. Given the large number of Category III fisheries and the lack of accessible and detailed information on many of these fisheries, including the Atlantic, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery, NMFS anticipates this review will take some time. As noted in the preamble, fishery fact sheets for all Category III fisheries are expected to be completed with the LOF for 2015, although this timeline may be revised as this effort progresses.

Comment 26: The Commission recommends that NMFS keep the eastern Gulf of Mexico coastal bottlenose dolphin stock on the lists of species or stocks incidentally killed or injured in the Gulf of Mexico gillnet fishery and the Gulf of Mexico menhaden purse seine fishery until five years of adequate observer coverage data show otherwise.

Response: The eastern Gulf of Mexico coastal bottlenose dolphin stock was removed from the Gulf of Mexico gillnet fishery because there is little to no overlap with this fishery. The range of the eastern Gulf of Mexico coastal bottlenose dolphin stock extends off the coast of Florida to the 20 m isobath. Gillnets are prohibited in Florida state waters. In Federal waters on the Gulf side, there are no gillnet fisheries with the exception of a small fishery for king mackerel north of the Marquesas' in the Florida Keys that fishes an average of 5–7 days per year. Because the spatial and temporal overlap of this stock with this fishery is minimal and there are no recorded takes, NMFS removed the Gulf of Mexico coastal bottlenose dolphin stock from this fishery.

NMFS also removed the eastern Gulf of Mexico coastal bottlenose dolphin stock from the Gulf of Mexico menhaden purse seine fishery because there is now minimal overlap between the fishery and the stock's range. Historically, the bait fishery for menhaden occurred along the Florida panhandle and around Tampa Bay, but the fishery was curtailed after the Florida net-ban of 1995 (Gulf States Marine Fisheries Commission, 2010). There is now only a very small fishery for menhaden off the Florida panhandle in Federal waters. No has been documented from that fishery.

Comment 27: The Commission recommends that NMFS keep the Gulf of Mexico oceanic Gervais beaked whale stock on the lists of species or stocks incidentally killed or injured in Atlantic, Caribbean, Gulf of Mexico large pelagics longline fishery until five years of adequate observer coverage data show otherwise.

Response: NMFS will keep the Gulf of Mexico oceanic Gervais beaked whale stock on the list of species incidentally killed or injured by the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery, because there has not been adequate observer coverage data that show otherwise in the five year (2006–2010) data period used in the LOF for 2013 analysis.

Comment 28: The Commission recommends that NMFS keep the northern Gulf of Mexico continental shelf bottlenose dolphin stock on the lists of species or stocks incidentally killed or injured in Atlantic, Caribbean, Gulf of Mexico large pelagics longline fishery until five years of adequate observer coverage data show otherwise.

Response: The Gulf of Mexico continental shelf bottlenose dolphin stock was removed from the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery because there has been adequate observer coverage without any observed takes in the last five years. The Gulf of Mexico portion of the pelagic longline fishery has adequate observer coverage. For example, in 2011, the average observer coverage of total longline sets in the Gulf of Mexico was 17.6% (Garrison and Stokes, 2012). The last reported take potentially from this stock was in 2007. This dolphin was released alive and presumed to have no serious injuries. This animal could have belonged to the continental shelf or oceanic stock.

Comment 29: The Association, Turtle Island Restoration Network, and Bright Eye Fish Company request that NMFS re-evaluate or provide further explanation of the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery increase of estimated number of vessels/persons from 94 to 420.

Response: NMFS re-evaluated the compiled permit data to ensure all duplicated values were removed. The corrected estimated number of vessels/persons is 234, based on 2012 permit data for all Atlantic tuna longline and incidental and directed swordfish. The value of 234 represents all unique vessels that have one of these permits. Active vessels in a given year may be less than 234, but we list all permitted vessels that have the potential to fish in a given year within the designated pelagic longline fishery.

Comments on Commercial Fisheries on the High Seas

Comment 30: The Turtle Island Restoration Network requests an explanation of why prohibited fishing gears, such as gillnets on the high seas, are listed as active fisheries.

Response: As stated in the preamble supplementary information under header "Are high seas fisheries included on the LOF?" HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas.

Gillnets are an authorized gear type in the List of Authorized Fisheries and Gear in the MSA Provisions (50 CFR 600.725). On the U.S. West Coast, the thresher shark and swordfish fishery is authorized to use drift gillnets. Under the FMP for U.S. West Coast Fisheries for Highly Migratory Species, drift gillnet use is banned during certain seasons in specific portions of the EEZ off of California and Oregon. An HSFCA permit is generally associated with at least one fishery that is authorized by a Fishery Management Plan. As such gill netters are still listed as a vessel type in the HSFCA permit application.

Comment 31: The Association states that the high seas fishing vessel permit holders are already included in the Atlantic, Caribbean, Gulf of Mexico large pelagics longline vessels/persons count, so they have been double-counted in the NMFS estimate of vessels/permits.

Response: As stated in the preamble supplementary information under header "Are high seas fisheries included on the LOF," many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a "*" after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Summary of Changes From the Proposed Rule

In this final rule, NMFS updated the "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline" fishery vessels/persons value. The revised, final estimate is 243, down from 420 in the proposed rule.

In this final rule, NMFS added Gervais beaked whales (Gulf of Mexico oceanic) to the list of species or stocks incidentally killed or injured in the "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline" fishery.

In this final rule, NMFS removed West Indian manatee (Florida) from the list of species or stocks incidentally killed or injured in the "Southeastern U.S. Atlantic, Gulf of Mexico trawl" fishery.

Summary of Changes to the LOF for 2013

The following summarizes changes to the LOF for 2013 in fishery classification, the estimated number of vessels/participants in a particular fishery, the species or stocks that are incidentally killed or injured in a particular fishery, and the fisheries that are subject to a take reduction plan. The classifications and definitions of U.S. commercial fisheries for 2013 are identical to those provided in the LOF for 2012 with the changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), CA (California), DE (Delaware), FL (Florida), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

Commercial Fisheries in the Pacific Ocean

Fishery Classification

NMFS reclassifies the "CA thresher shark/swordfish drift gillnet" fishery from Category II to Category I.

NMFS reclassifies the "Alaska Bering Sea and Aleutian Islands Rockfish trawl" fishery from Category III to Category II.

NMFS reclassifies the "Alaska Bering Sea/Aleutian Islands Pacific cod longline" fishery from Category II to Category III.

NMFS reclassifies the "Alaska Bering Sea sablefish pot fishery" from Category II to Category III.

NMFS determined that the "Hawaii charter vessel" and "Hawaii trolling, rod and reel" fisheries should remain classified as Category III fisheries.

Number of Vessels/Persons

NMFS updates the estimated number of persons/vessels operating in the Pacific Ocean as follows:

Category	Fishery	Estimated number of participants (Final 2012 LOF)	Estimated number of participants (Final 2013 LOF)
I	HI deep-set (tuna target) longline/set line	124	129
I	CA thresher shark/swordfish drift gillnet	45	25
II	AK Bristol Bay Salmon drift gillnet	1862	1863
II	AK Bristol Bay salmon set gillnet	983	982
II	AK Cook Inlet salmon drift gillnet	571	569
II	AK Kodiak salmon purse seine	370	379
II	AK Peninsula/Aleutian Islands salmon set gillnet	115	114
II	AK Yakutat salmon set gillnet	166	167
II	HI shallow-set (swordfish target) longline/set line	28	20
II	American Samoa longline	26	24
II	HI shortline	13	11
II	AK Southeast salmon drift gillnet	476	474
III	AK Bering Sea, Aleutian Islands Pacific cod longline	54	154
III	AK Bering Sea, Aleutian Islands Greenland Turbot longline	29	36
III	AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	824	1702
III	AK roe herring and food/bait herring gillnet	986	990
III	AK roe herring and food/bait purse seine	361	367
III	AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II)	936	935
III	AK salmon troll	2045	2008
III	AK Gulf of Alaska Pacific cod longline	440	107

Category	Fishery	Estimated number of participants (Final 2012 LOF)	Estimated number of participants (Final 2013 LOF)
III	AK halibut longline/set line (State and Federal waters)	2521	2280
III	AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	1448	1323
III	AK miscellaneous finfish otter/beam trawl	317	282
III	AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	32	33
III	AK statewide miscellaneous finfish pot	293	243
III	AK BSAI crab pot	297	296
III	AK Gulf of Alaska crab pot	300	389
III	AK southeast Alaska crab pot	433	415
III	AK Southeast Alaska shrimp pot	283	274
III	AK shrimp pot, except southeast	15	210
III	AK Octopus/squid pot	27	26
III	AK miscellaneous finfish handline/hand troll and mechanical jig	445	456
III	AK North Pacific halibut handline/hand troll and mechanical jig	228	180
III	AK herring spawn on kelp pound net	415	411
III	AK Southeast herring roe/food/bait pound net	6	4
III	AK urchin and other fish/shellfish	570	521
III	AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,302 (102 AK)	1,320 (120 AK)
III	HI inshore gillnet	44	36
III	HI opelu/akule net	16	22
III	HI inshore purse seine	5	<3
III	HI throw net, cast net	22	29
III	HI hukilau net	27	26
III	HI lobster tangle net	1	0
III	American Samoa tuna troll	<50	7
III	HI trolling, rod and reel	2,191	1,560
III	Commonwealth of the Northern Mariana Islands tuna troll	88	40
III	Guam tuna troll	401	432
III	HI kaka line	24	17
III	HI vertical longline	10	9
III	HI crab trap	5	9
III	HI fish trap	13	9
III	HI lobster trap	1	<3
III	HI shrimp trap	2	4
III	HI crab net	5	6
III	HI Kona crab loop net	46	48
III	American Samoa bottomfish	<50	12
III	Commonwealth of the Northern Mariana Islands bottomfish	<50	28
III	Guam bottomfish	200	>300
III	HI aku boat, pole, and line	2	3
III	HI Main Hawaiian Islands deep-sea bottomfish handline	569	567
III	HI inshore handline	416	378
III	HI tuna handline	445	459
III	Western Pacific squid jig	6	1
III	HI bullpen trap	4	<3
III	HI black coral diving	1	<3
III	HI handpick	61	57
III	HI lobster diving	39	29
III	HI spearfishing	144	143

List of Species or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS adds sperm whales (CA/OR/WA stock) and bottlenose dolphins (CA/OR/WA offshore stock) to the list of species or stocks incidentally killed or injured in the Category I "CA thresher shark/swordfish drift gillnet" fishery. NMFS, further, adds a superscript "1" after sperm whale (CA/OR/WA stock), indicating that this stock is a driver for the Category I classification of this fishery. NMFS, also, removes the superscript "1" from the humpback whale (CA/OR/WA stock).

NMFS adds bottlenose dolphins (CA/OR/WA offshore stock) to the list of species or stocks incidentally killed or injured in the Category III "WA/OR/CA groundfish, bottomfish longline/set line" fishery.

NMFS makes several changes to the list of species or stocks incidentally killed or injured in the Category II "HI shallow-set (swordfish target) longline" fishery. NMFS adds short-finned pilot whales (Hawaiian stock), removes Bryde's whales (Hawaiian stock), and adds a superscript "1" following false killer whale (Hawaii pelagic stock), to indicate the stock is driving the fishery's Category II classification. NMFS removes the superscript "1" following bottlenose dolphin (Hawaii pelagic stock), to indicate the stock is no longer driving the fishery's Category II classification.

NMFS removes humpback whales (Central North Pacific stock) and Blainville's beaked whales (Hawaiian stock) from the list of species or stocks incidentally killed or injured in the Category I "Hawaii deep-set (tuna target) longline" fishery.

NMFS adds pantropical spotted dolphins (Hawaii stock) to the list of species or stocks incidentally injured or killed in the Category III "Hawaii trolling, rod and reel" and "Hawaii charter vessel" fisheries.

NMFS makes several changes to the list of species or stocks incidentally killed or injured in the Category II "Alaska Bering Sea and Aleutian Islands Flatfish trawl" fishery. NMFS adds gray whales (Eastern North Pacific stock), humpback whales (Western North Pacific stock), killer whales (Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock), and ringed seals (Alaska stock).

NMFS makes several changes to the list of species or stocks incidentally killed or injured in the Category II

"Alaska Bering Sea and Aleutian Islands Pollock trawl" fishery. NMFS adds ringed seals (Alaska stock), bearded seals (Alaska stock), and Northern fur seals (Eastern Pacific stock). NMFS removes killer whales (Eastern North Pacific, Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock) and minke whales (Alaska stock).

NMFS makes several changes to the list of species or stocks incidentally injured or killed by the Category III "Alaska Bering Sea and Aleutian Islands Pacific Cod longline" fishery. NMFS adds Northern fur seals (eastern Pacific stock) and Dall's Porpoise (Alaska stock), and removes Steller sea lions (Western United States stock), ribbon seals (Alaska stock), and killer whales (Alaska Resident stock).

NMFS adds Steller sea lions (Western United States stock) to the list of species or stocks incidentally injured or killed by the Category III "Gulf of Alaska Pacific Cod longline" fishery.

NMFS removes Steller sea lions (Eastern United States stock) from the list of species or stocks incidentally injured or killed by the Category III "Gulf of Alaska Sablefish longline" fishery.

NMFS removes Steller sea lions (Eastern United States stock) from the list of species or stocks incidentally injured or killed by the Category III "Alaska Halibut longline" fishery.

NMFS adds ribbon seal (Alaska stock) to the list of species or stocks incidentally injured or killed by the Category III "Atka Mackerel trawl" fishery.

NMFS removes harbor seals (Bering Sea stock) from the list of species or stocks incidentally injured or killed by the Category III "Bering Sea/Aleutian Islands Pacific Cod trawl" fishery.

NMFS removes humpback whales (Western North Pacific stock) and (Central North Pacific stock) from the list of species or stocks incidentally injured or killed by the Category III "Alaska Bering Sea sablefish pot" fishery.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Category	Fishery	Estimated number of participants (Final 2012 LOF)	Estimated number of participants (Final 2013 LOF)
I	Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline	94	420
I	Northeast Sink Gillnet	3,828	4,375
I	Mid Atlantic Gillnet	6,402	5,509
I	Northeast/Mid Atlantic American Lobster Trap/Pot	11,767	11,693
II	North Carolina inshore gillnet	2,250	1,323
II	Southeast Atlantic gillnet	779	357
II	Atlantic blue crab trap/pot	10,008	8,557
II	Northeast Anchored Float Gillnet	414	421
II	Northeast Mid Water Trawl (including pair trawl)	887	1,103
II	Mid Atlantic Mid Water Trawl (including pair trawl and flynet)	669	322
II	Mid Atlantic Beach Haul Seine	874	565
II	Northeast Bottom Trawl	2,584	2,987
II	Virginia Pound Net	231	67
II	Northeast Drift Gillnet	414	311
II	Atlantic Mixed Species Trap/Pot	3,526	3,467
II	Mid Atlantic Bottom Trawl	1,388	631
II	Chesapeake Bay Inshore Gillnet	3,328	1,126
II	Mid Atlantic Menhaden Purse Seine	56	5
III	Atlantic Shellfish Bottom Trawl	>86	>58
III	Gulf of Maine Atlantic Herring Purse Seine	>6	>7
III	Northeast, Mid-Atlantic Bottom Longline/Hook & Line	>1,281	>1,207
III	Gulf of Maine, U.S. Mid-Atlantic Sea Scallop Dredge	>230	>403
III	Gulf of Maine herring and Atlantic mackerel stop seine/weir	Unknown	>1
III	Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	>403	428

List of Species or Stocks Incidentally Killed or Injured

NMFS removes bottlenose dolphin (Northern Gulf of Mexico continental shelf stock) from the list of species or stocks incidentally injured or killed in the Category I "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline" fishery.

NMFS removes bottlenose dolphin (Eastern Gulf of Mexico coastal stock) from the list of species or stocks incidentally injured or killed in the Category II "Gulf of Mexico gillnet" fishery.

NMFS removes Atlantic spotted dolphins (Western North Atlantic stock) from the list of species or stocks incidentally injured or killed in the Category II "Southeastern U.S. Atlantic shark gillnet" fishery.

NMFS removes bottlenose dolphins (Eastern Gulf of Mexico coastal stock) from the list of species or stocks incidentally injured or killed in the Category II "Gulf of Mexico menhaden purse seine" fishery.

NMFS removes dwarf sperm whales (Western North Atlantic stock) from the list of species or stocks incidentally injured or killed in the Category III "Caribbean gillnet" fishery.

NMFS adds bottlenose dolphin (Southern South Carolina/Georgia coastal stock) to the list of species or stocks incidentally injured or killed in the Category III "Georgia cannonball jellyfish trawl" fishery.

NMFS adds minke whales (Canadian East Coast stock) to the list of species or stocks incidentally killed or injured in the Category II "Northeast bottom trawl" fishery.

NMFS adds Risso's dolphins (Western North Atlantic stock) to the list of species or stocks incidentally killed or injured in the Category I "Mid-Atlantic gillnet" fishery.

NMFS adds long-finned pilot whales (Western North Atlantic stock) and short-finned pilot whales (Western North Atlantic stock) to the list of species or stocks incidentally killed or injured in the Category I "Northeast sink gillnet" fishery.

NMFS adds common dolphins (Western North Atlantic stock) and gray

seals (Western North Atlantic stock) to the list of species or stocks incidentally killed or injured in the Category II "Northeast mid-water trawl" fishery.

NMFS adds gray seals (Western North Atlantic stock) to the list of species stocks incidentally killed or injured in the Category II "Mid-Atlantic bottom trawl" fishery.

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS updates the estimated number of HSFCA permits in multiple high seas fisheries for multiple gear types (Table 3). The updated numbers of HSFCA permits reflect the current number of permits in the NMFS National Permit System database.

Category	High Seas Fishery	Number of HSFCA permits (Final 2012 LOF)	Number of HSFCA permits (Final 2013 LOF)
I	Atlantic Highly Migratory Species Longline	81	79
II	Atlantic HMS Drift Gillnet	1	2
II	Pacific HMS Drift Gillnet	3	4
II	Atlantic HMS Trawl	3	5
II	Western Pacific Pelagic Trawl	1	0
II	South Pacific Tuna Purse Seine	33	38
II	South Pacific Tuna Longline	11	10
II	Pacific HMS Handline/Pole and Line	30	40
II	South Pacific Albacore Handline/Pole and Line	8	7
II	Western Pacific Pelagic Handline/Pole and Line	8	6
II	Atlantic HMS Troll	7	5
II	South Pacific Albacore Troll	51	36
II	Western Pacific Pelagic Troll	32	22
III	Pacific HMS Longline	84	96
III	Pacific HMS Purse Seine	7	6
III	Pacific HMS Troll	258	263

List of Species or Stocks Incidentally Killed or Injured in High Seas Fisheries (Table 3)

NMFS removes humpback whales (Central North Pacific stock) and Blainville's beaked whales (Hawaiian and unknown stocks) from the list of species or stocks incidentally killed or injured in the "Western Pacific Pelagic (HI Deep-set component)" fishery.

NMFS removes Bryde's whales (Hawaiian and unknown stocks) and adds short-finned pilot whales (Hawaiian and unknown stocks) to the list of species or stocks incidentally killed or injured in the "Western Pacific Pelagic (HI Shallow-set component)" fishery.

Fisheries Affected by Take Reduction Teams and Plans

NMFS updates the list of fisheries affected by take reduction teams and plans found in Table 4 of the LOF.

In the Atlantic, Gulf of Mexico, and Caribbean region, two updates are made: The Atlantic portion of the "Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery" is subject to the Bottlenose Dolphin Take Reduction Plan (BDTRP), and the "Chesapeake Bay inshore gillnet fishery" is also subject to the BDTRP.

In the Pacific Ocean region, NMFS adds "False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37" to the list of take reduction plans. Affected fisheries include the Category I "Hawaii deep-set (tuna target) longline/set line" and Category II "Hawaii shallow-set (swordfish target) longline/set line" fisheries.

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the high seas; and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels/persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided, which represents a measure of potential effort. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels/persons in the fishery. NMFS acknowledges that, in some cases, these estimations may be inflations of actual effort, such as for many of the Mid-Atlantic and New England fisheries. However, in these cases, the numbers represent the potential effort for each fishery, given the multiple gear types several state permits may allow for. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates as observer coverage and bycatch estimates are based on vessel trip reports and landings data. For additional information on fishing effort in fisheries found on Table 1 or 2, NMFS refers the reader to contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time.

Tables 1, 2, and 3 also list the marine mammal species or stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, disentanglement network data, and MMAP reports. This list includes all species or stocks known to be injured or killed in a given fishery but also includes species or stocks for which there are anecdotal records of an injury or mortality. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (i.e., MMAP reports) may not be verified. In Tables 1 and 2, NMFS has designated those stocks driving a fishery's classification (i.e., the fishery is classified based on serious injuries and mortalities of a marine mammal stock that are greater than 50 percent [Category I], or greater than 1 percent

and less than 50 percent [Category II], of a stock's PBR) by a "[1]" after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented injuries or mortalities of marine mammals, or fisheries that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a "Category II fishery" in 50 CFR 229.2 (i.e., fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a "[2]" after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fishery on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a "*" after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
Category I		
LONGLINE/SET LINE FISHERIES:		
HI deep-set (tuna target) longline/set line *^	129	Bottlenose dolphin, HI Pelagic False killer whale, HI Insular [1] False killer whale, HI Pelagic [1] False killer whale, Palmyra Atoll Pantropical spotted dolphin, HI Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
GILLNET FISHERIES:		
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *.	25	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Humpback whale, CA/OR/WA Long-beaked common dolphin, CA Northern elephant seal, CA breeding Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, GA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Sperm whale, CA/OR/WA [1]
Category II		
GILLNET FISHERIES:		
CA halibut/white seabass and other species set gillnet (≤3.5 in mesh).	50	California sea lion, U.S. Harbor seal, CA Humpback whale, CA/OR/WA [1] Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) [2].	30	California sea lion, U.S. Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
AK Bristol Bay salmon drift gillnet [2]	1,863	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet [2]	982	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA [1] Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
AK Cook Inlet salmon set gillnet	738	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Humpback whale, Central North Pacific [1] Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA [1] Harbor seal, GOA Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet [2].	162	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet [2].	114	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK Harbor porpoise, GOA [1] Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea otter, South Central AK Steller sea lion, Western U.S. [1]
AK Southeast salmon drift gillnet	474	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific [1] Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet [2]	167	Gray whale, Eastern North Pacific Harbor porpoise, Southeastern AK Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA [1] Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Cook Inlet salmon purse seine	82	Humpback whale, Central North Pacific [1]
AK Kodiak salmon purse seine	379	Humpback whale, Central North Pacific [1]
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	34	Bearded seal, AK Gray whale, Eastern North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Humpback whale, Western North Pacific [1] Killer whale, AK resident [1] Killer whale, GOA, AI, BS transient [1] Northern fur seal, Eastern Pacific Ringed seal, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S. [1] Walrus, AK
AK Bering Sea, Aleutian Islands pollock trawl	95	Bearded seal, AK Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific Humpback whale, Western North Pacific Northern fur seal, Eastern Pacific Ribbon seal, AK Ringed seal, AK Spotted seal, AK Steller sea lion, Western U.S. [1]

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
Bering Sea, Aleutian Islands rockfish trawl	28	Killer whale, ENP AK resident [1] Killer whale, GOA, AI, BS transient [1]
POT, RING NET, AND TRAP FISHERIES:		
CA spot prawn pot	27	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA [1]
CA Dungeness crab pot	534	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA [1]
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA [1]
WA/OR/CA sablefish pot	309	Humpback whale, CA/OR/WA [1]
WA coastal Dungeness crab pot/trap	228	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA [1]
LONGLINE/SET LINE FISHERIES:		
HI shallow-set (swordfish target) longline/set line [*^].	20	Bottlenose dolphin, HI Pelagic False killer whale, HI Pelagic [1] Humpback whale, Central North Pacific Kogia sp. whale (Pygmy or dwarf sperm whale), HI Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
American Samoa longline [2]	24	False killer whale, American Samoa Rough-toothed dolphin, American Samoa
HI shortline [2]	11	None documented
Category III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1702	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	990	None documented
CA set gillnet (mesh size <3.5 in)	304	None documented
HI inshore gillnet	36	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA/OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL, THROW NET AND TANGLE NET FISHERIES:		
AK Southeast salmon purse seine	415	None documented in the most recent 5 years of data
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	2	None documented
AK octopus/squid purse seine	0	None documented
AK roe herring and food/bait herring beach seine.	6	None documented
AK roe herring and food/bait herring purse seine.	367	None documented
AK salmon beach seine	31	None documented
AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II).	935	Harbor seal, GOA
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S. Harbor seal, CA
CA squid purse seine	80	Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
CA tuna purse seine [*]	10	None documented
WA/OR sardine purse seine	42	None documented
WA (all species) beach seine or drag seine	235	None documented
WA/OR herring, smelt, squid purse seine or lampara.	130	None documented

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
HI opelu/akule net	22	None documented
HI inshore purse seine	<3	None documented
HI throw net, cast net	29	None documented
HI hukilau net	26	None documented
HI lobster tangle net	0	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA/OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA/OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries*.	1,320 (120 AK)	None documented
AK salmon troll	2,008	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	7	None documented
CA/OR/WA salmon troll	4,300	None documented
HI trolling, rod and reel	1,560	Pantropical spotted dolphin, HI
Commonwealth of the Northern Mariana Islands tuna troll.	40	None documented
Guam tuna troll	432	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Pacific cod longline.	154	Dall's Porpoise, AK Northern fur seal, Eastern Pacific
AK Bering Sea, Aleutian Islands rockfish longline.	0	None documented
AK Bering Sea, Aleutian Islands Greenland turbot longline.	36	Killer whale, AK resident
AK Bering Sea, Aleutian Islands sablefish longline.	28	None documented
AK Gulf of Alaska halibut longline	1,302	None documented
AK Gulf of Alaska Pacific cod longline	107	Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish longline	0	None documented
AK Gulf of Alaska sablefish longline	291	Sperm whale, North Pacific
AK halibut longline/set line (State and Federal waters).	2,280	None documented in the most recent 5 years of data
AK octopus/squid longline	2	None documented
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	1,323	None documented
WA/OR/CA groundfish, bottomfish longline/set line.	367	Bottlenose dolphin, CA/OR/WA offshore
WA/OR North Pacific halibut longline/set line	350	None documented
CA pelagic longline	6	None documented in the most recent 5 years of data
HI kaka line	17	None documented
HI vertical longline	9	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl.	9	Ribbon seal, AK Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl.	93	Steller sea lion, Western U.S.
AK Gulf of Alaska flatfish trawl	41	Northern elephant seal, NP
AK Gulf of Alaska Pacific cod trawl	62	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	62	Dall's porpoise, AK Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	34	None documented
AK food/bait herring trawl	4	None documented
AK miscellaneous finfish otter/beam trawl	282	None documented

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	33	None documented
AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	2	None documented
CA halibut bottom trawl	53	None documented
WA/OR/CA shrimp trawl	300	None documented
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.
POT, RING NET, AND TRAP FISHERIES:		
AK statewide miscellaneous finfish pot	243	None documented
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot.	68	None documented
AK Bering Sea, Aleutian Islands crab pot	296	None documented
AK Bering Sea sablefish pot	6	None documented
AK Gulf of Alaska crab pot	389	None documented
AK Gulf of Alaska Pacific cod pot	154	Harbor seal, GOA
AK Southeast Alaska crab pot	415	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	274	Humpback whale, Central North Pacific (Southeast AK)
AK shrimp pot, except Southeast	210	None documented
AK octopus/squid pot	26	None documented
AK snail pot	1	None documented
CA coonstripe shrimp, rock crab, tanner crab pot or trap.	305	Gray whale, Eastern North Pacific Harbor seal, CA
CA spiny lobster	225	Gray whale, Eastern North Pacific
OR/CA hagfish pot or trap	54	None documented
WA/OR shrimp pot/trap	254	None documented
WA Puget Sound Dungeness crab pot/trap	249	None documented
HI crab trap	9	None documented
HI fish trap	9	None documented
HI lobster trap	<3	Hawaiian monk seal
HI shrimp trap	4	None documented
HI crab net	6	None documented
HI Kona crab loop net	48	None documented.
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline/hand troll and mechanical jig.	456	None documented
AK North Pacific halibut handline/hand troll and mechanical jig.	180	None documented
AK octopus/squid handline	0	None documented
American Samoa bottomfish	12	None documented
Commonwealth of the Northern Mariana Islands bottomfish.	28	None documented
Guam bottomfish	>300	None documented
HI aku boat, pole, and line	3	None documented
HI Main Hawaiian Islands deep-sea bottomfish handline.	567	Hawaiian monk seal
HI inshore handline	378	None documented
HI tuna handline	459	None documented
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	<3	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	411	None documented
AK Southeast herring roe/food/bait pound net	4	None documented
WA herring brush weir	1	None documented
HI bullpen trap	<3	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	0	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK Dungeness crab	2	None documented
AK herring spawn on kelp	266	None documented
AK urchin and other fish/shellfish	521	None documented
CA abalone	0	None documented
CA sea urchin	583	None documented
HI black coral diving	<3	None documented
HI fish pond	16	None documented
HI handpick	57	None documented
HI lobster diving	29	None documented
HI spearfishing	143	None documented
WA/CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK/WA/OR/CA commercial passenger fishing vessel.	>7,000 (2,702 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	Pantropical spotted dolphin, HI
LIVE FINFISH/SHELLFISH FISHERIES:		
CA nearshore finfish live trap/hook-and-line	93	None documented

List of Abbreviations and Symbols Used in Table 1: AK—Alaska; CA—California; GOA—Gulf of Alaska; HI—Hawaii; OR—Oregon; WA—Washington; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3; ^ The list of marine mammal species or stocks killed or injured in this fishery is identical to the list of species or stocks killed or injured in high seas component of the fishery, minus species or stocks have geographic ranges exclusively on the high seas. The species or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.^

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
Category I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	5,509	Bottlenose dolphin, Northern Migratory coastal [1] Bottlenose dolphin, Southern Migratory coastal [1] Bottlenose dolphin, Northern NC estuarine system [1] Bottlenose dolphin, Southern NC estuarine system [1] Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	4,375	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF [1] Harbor seal, WNA Harp seal, WNA Hooded seal, WNA

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
		Humpback whale, Gulf of Maine Long-finned Pilot whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA Short-finned Pilot whale, WNA White-sided dolphin, WNA
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot.	11,693	Harbor seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA [1]
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline*.	234	Atlantic spotted dolphin, GMX continental and oceanic Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Gervais beaked whale, GMX oceanic Killer whale, GMX oceanic Long-finned pilot whale, WNA [1] Mesoplodon beaked whale, WNA Northern bottlenose whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA [1] Sperm whale, GMX oceanic
Category II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet [2]	1,126	None documented in the most recent 5 years of data
Gulf of Mexico gillnet [2]	724	Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
NC inshore gillnet	1,323	Bottlenose dolphin, Northern NC estuarine system [1] Bottlenose dolphin, Southern NC estuarine system [1]
Northeast anchored float gillnet [2]	421	Harbor seal, WNA Humpback whale, Gulf of Maine White-sided dolphin, WNA
Northeast drift gillnet [2]	311	None documented
Southeast Atlantic gillnet [2]	357	Bottlenose dolphin, Southern Migratory coastal Bottlenose dolphin, SC/GA coastal Bottlenose dolphin, Central FL coastal Bottlenose dolphin, Northern FL coastal
Southeastern U.S. Atlantic shark gillnet	30	Bottlenose dolphin, Central FL coastal [1] Bottlenose dolphin, Northern FL coastal North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl).	322	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA [1]
Mid-Atlantic bottom trawl	631	Bottlenose dolphin, WNA offshore Common dolphin, WNA [1] Gray seal, WNA Harbor seal, WNA

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
		Long-finned pilot whale, WNA [1]
		Risso's dolphin, WNA [1]
		Short-finned pilot whale, WNA [1]
		White-sided dolphin, WNA
Northeast mid-water trawl (including pair trawl)	1,103	Gray seal, WNA
		Harbor seal, WNA
		Long-finned pilot whale, WNA [1]
		Short-finned pilot whale, WNA [1]
		Common dolphin, WNA
		White-sided dolphin, WNA
Northeast bottom trawl	2,987	Bottlenose dolphin, WNA offshore
		Common dolphin, WNA
		Gray seal, WNA
		Harbor porpoise, GME/BF
		Harbor seal, WNA
		Harp seal, WNA
		Long-finned pilot whale, WNA
		Minke whale, Canadian East Coast
		Short-finned pilot whale, WNA
		White-sided dolphin, WNA [1]
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.	4,950	Atlantic spotted dolphin, GMX continental and oceanic
		Bottlenose dolphin, SC/GA coastal [1]
		Bottlenose dolphin, Eastern GMX coastal [1]
		Bottlenose dolphin, GMX continental shelf
		Bottlenose dolphin, Northern GMX coastal
		Bottlenose dolphin, Western GMX coastal [1]
		Bottlenose dolphin, GMX bay, sound, estuarine [1]
TRAP/POT FISHERIES:		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot [2].	1,282	Bottlenose dolphin, Biscayne Bay estuarine
		Bottlenose dolphin, Central FL coastal
		Bottlenose dolphin, Eastern GMX coastal
		Bottlenose dolphin, FL Bay
		Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion)
		Bottlenose dolphin, Indian River Lagoon estuarine system
		Bottlenose dolphin, Jacksonville estuarine system
		Bottlenose dolphin, Northern GMX coastal
Atlantic mixed species trap/pot [2]	3,467	Fin whale, WNA
		Humpback whale, Gulf of Maine
Atlantic blue crab trap/pot	8,557	Bottlenose dolphin, Charleston estuarine system [1]
		Bottlenose dolphin, Indian River Lagoon estuarine system [1]
		Bottlenose dolphin, Jacksonville estuarine system [1]
		Bottlenose dolphin, SC/GA coastal [1]
		Bottlenose dolphin, Northern GA/Southern SC estuarine system [1]
		Bottlenose dolphin, Southern GA estuarine system [1]
		Bottlenose dolphin, Northern Migratory coastal [1]
		Bottlenose dolphin, Southern Migratory coastal [1]
		Bottlenose dolphin, Central FL coastal [1]
		Bottlenose dolphin, Northern FL coastal [1]
		Bottlenose dolphin, Northern NC estuarine system [1]
		Bottlenose dolphin, Southern NC estuarine system [1]
		West Indian manatee, FL [1]
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine
		Bottlenose dolphin, Northern GMX coastal [1]
		Bottlenose dolphin, Western GMX coastal [1]
Mid-Atlantic menhaden purse seine [2]	5	Bottlenose dolphin, Northern Migratory coastal
		Bottlenose dolphin, Southern Migratory coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	565	Bottlenose dolphin, Northern NC estuarine system [1]

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
NC long haul seine	372	Bottlenose dolphin, Northern Migratory coastal [1] Bottlenose dolphin, Southern Migratory coastal [1] Bottlenose dolphin, Southern NC estuarine system Bottlenose dolphin, Northern NC estuarine system [1]
STOP NET FISHERIES:		
NC roe mullet stop net	13	Bottlenose dolphin, Southern NC estuarine system [1]
POUND NET FISHERIES:		
VA pound net	67	Bottlenose dolphin, Northern NC estuarine system Bottlenose dolphin, Northern Migratory coastal [1] Bottlenose dolphin, Southern Migratory coastal [1]
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	None documented in the most recent 5 years of data
DE River inshore gillnet	unknown	None documented in the most recent 5 years of data
Long Island Sound inshore gillnet	unknown	None documented in the most recent 5 years of data
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent 5 years of data
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	>58	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf
Gulf of Mexico mixed species trawl	20	None documented
GA cannonball jellyfish trawl	1	Bottlenose dolphin, South Carolina/Georgia
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	>2	None documented
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
LONGLINE/HOOK–AND–LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line.	>1,207	None documented
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	428	Humpback whale, Gulf of Maine
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	<125	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX continental shelf
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	1,446	None documented
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented
TRAP/POT FISHERIES:		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, FL Bay estuarine
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed or injured
		Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented
U.S. Mid-Atlantic eel trap/pot	unknown	None documented
STOP SEINE/WEIR/POUND NET/FLOATING TRAP FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir.	>1	Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system
RI floating trap	9	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel dredge	unknown	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge.	>403	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge.	unknown	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	None documented in the most recent 5 years of data
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection.	unknown	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Indian River Lagoon estuarine system Bottlenose dolphin, Southern NC estuarine system

List of Abbreviations and Symbols Used in Table 2: DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; SC- South Carolina; VA—Virginia; WNA—Western North Atlantic; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Category I		
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species * +	79	Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, WNA offshore Common dolphin, WNA

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
		Cuvier's beaked whale, WNA
		Long-finned pilot whale, WNA
		Mesoplodon beaked whale, WNA
		Pygmy sperm whale, WNA
		Risso's dolphin, WNA
		Short-finned pilot whale, WNA
Western Pacific Pelagic (HI Deep-set component) *^ +.	124	Bottlenose dolphin, HI Pelagic
		Bottlenose dolphin, unknown
		False killer whale, HI Pelagic
		False killer whale, unknown
		Pantropical spotted dolphin, HI
		Pantropical spotted dolphin, unknown
		Risso's dolphin, HI
		Risso's dolphin, unknown
		Short-finned pilot whale, HI
		Short-finned pilot whale, unknown
		Striped dolphin, HI
		Striped dolphin, unknown
Category II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	2	Undetermined
Pacific Highly Migratory Species *^	4	Long-beaked common dolphin, CA
		Humpback whale, CA/OR/WA
		Northern right-whale dolphin, CA/OR/WA
		Pacific white-sided dolphin, CA/OR/WA
		Risso's dolphin, CA/OR/WA
		Short-beaked common dolphin, CA/OR/WA
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	5	Undetermined
CCAMLR	0	Antarctic fur seal
Western Pacific Pelagic	0	Undetermined
PURSE SEINE FISHERIES:		
South Pacific Tuna Fisheries	38	Undetermined
Western Pacific Pelagic	3	Undetermined
POT VESSEL FISHERIES:		
Pacific Highly Migratory Species **	3	Undetermined
South Pacific Albacore Troll	3	Undetermined
Western Pacific Pelagic	3	Undetermined
LONGLINE FISHERIES:		
CCAMLR	0	None documented
South Pacific Albacore Troll	11	Undetermined
South Pacific Tuna Fisheries **	10	Undetermined
Western Pacific Pelagic (HI Shallow-set component) *^ +.	28	Bottlenose dolphin, HI Pelagic
		Bottlenose dolphin, unknown
		Humpback whale, Central North Pacific
		Kogia sp. whale (Pygmy or dwarf sperm whale), HI
		Kogia sp. whale (Pygmy or dwarf sperm whale), unknown
		Risso's dolphin, HI
		Risso's dolphin, unknown
		Short-finned pilot whale, HI
		Short-finned pilot whale, unknown
		Striped dolphin, HI
		Striped dolphin, unknown
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	3	Undetermined
Pacific Highly Migratory Species	40	Undetermined
South Pacific Albacore Troll	7	Undetermined
Western Pacific Pelagic	6	Undetermined
TROLL FISHERIES:		
Atlantic Highly Migratory Species	5	Undetermined
South Pacific Albacore Troll	36	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic	22	Undetermined
LINERS NEI FISHERIES:		
Pacific Highly Migratory Species **	1	Undetermined
South Pacific Albacore Troll	1	Undetermined

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Western Pacific Pelagic	1	Undetermined
FACTORY MOTHERSHIP FISHERIES:		
Western Pacific Pelagic	1	Undetermined
MULTIPURPOSE VESSELS NEI FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species **	5	Undetermined
South Pacific Albacore Troll	4	Undetermined
Western Pacific Pelagic	4	Undetermined
Category III		
LONGLINE FISHERIES:		
Pacific Highly Migratory Species * +	96	None documented in the most recent 5 years of data
PURSE SEINE FISHERIES		
Atlantic Highly Migratory Species *^	0	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
Pacific Highly Migratory Species * ^	6	None documented
TROLL FISHERIES:		
Pacific Highly Migratory Species *	263	None documented

List of Terms, Abbreviations, and Symbols Used in Table 3:
GMX—Gulf of Mexico; NEI—Not Elsewhere Identified; WNA—Western North Atlantic.
* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.
+ The marine mammal species or stocks listed as killed or injured in this fishery has been observed taken by this fishery on the high seas.
^ The list of marine mammal species or stocks killed or injured in this fishery is identical to the list of marine mammal species or stocks killed or injured in U.S. waters component of the fishery, minus species or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32.	*Category I* Mid-Atlantic gillnet Northeast/Mid-Atlantic American lobster trap/pot Northeast sink gillnet *Category II* Atlantic blue crab trap/pot Atlantic mixed species trap/pot Northeast anchored float gillnet Northeast drift gillnet Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet* Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot^
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35.	*Category I* Mid-Atlantic gillnet *Category II* Atlantic blue crab trap/pot Chesapeake Bay inshore gillnet fishery Mid-Atlantic haul/beach seine Mid-Atlantic menhaden purse seine NC inshore gillnet NC long haul seine NC roe mullet stop net Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl^ Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot^ VA pound net
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37.	*Category I* HI deep-set (tuna target) longline/set line *Category II* HI shallow-set (swordfish target) longline/set line
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	*Category I* Mid-Atlantic gillnet Northeast sink gillnet
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36.	*Category I* Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS—Continued

Take reduction plans	Affected fisheries
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	*Category II* CA thresher shark/swordfish drift gillnet (≥14 in mesh)
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	*Category II* Mid-Atlantic bottom trawl Mid-Atlantic mid-water trawl (including pair trawl) Northeast bottom trawl Northeast mid-water trawl (including pair trawl)
False Killer Whale Take Reduction Team (FKWTRT)	*Category I* HI deep-set (tuna target) longline/set line *Category II* HI shallow-set (swordfish target) longline/set line

* Only applicable to the portion of the fishery operating in U.S. waters; ^ Only applicable to the portion of the fishery operating in the Atlantic Ocean;

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule state that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This rule would not make any significant change in the management of reclassified fisheries; therefore, this rule is not expected to change the analysis or conclusion of the 2005 EA. The Council of Environmental Quality (CEQ) recommends agencies review EAs every five years; therefore, NMFS reviewed the 2005 EA in 2009. NMFS concluded that, because there have been no changes to the process used to develop the LOF and implement section 118 of the MMPA (including no new alternatives and no additional or new impacts on the human environment), there is no need to update the 2005 EA at this time. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an environmental document, as required under NEPA, specific to that action.

This rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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Dated: August 22, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–21054 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120814336–3739–04]

RINs 0648–BC27, 0648–BC97, and 0648–XC240

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 48, Framework Adjustment 50; 2013 Sector Operations Plans, Contracts, and Allocation Annual Catch Entitlements

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

ACTION: Final rule.

SUMMARY: This final rule finalizes interim measures put in place for the May 1, 2013, start of the Northeast (NE) multispecies fishing year. This action intends to do the following: Finalize interim rule measures put in place by Framework Adjustment (FW) 48, FW 50, and in the 2013 Sector Operations Plan rulemakings; respond to public comments received on the interim measures; and notify the public of changes being made to Eastern U.S./Canada Area quota monitoring and associated reporting requirements.

DATES: Effective September 30, 2013.

ADDRESSES: Copies of Frameworks 48 and 50, Sector Operations Plans, associated emergency rules, and other measures, the environmental assessments (EAs), its Regulatory Impact Reviews (RIRs), and the Final Regulatory Flexibility Act (FRFA) analyses prepared by the Council and NMFS are available from John K. Bullard, Regional Administrator, NMFS Northeast Regional Office (NERO), 55 Great Republic Drive, Gloucester, MA 01930. The FRFA analyses consist of the FRFA, public comments and responses, and the summary of impacts and alternatives contained in the previously published interim rules. The previously listed documents are also accessible via the Internet at: *http://www.nero.noaa.gov/sfd/sfdmulti.html.*

FOR FURTHER INFORMATION CONTACT: For information on this rule contact Michael Ruccio, Fishery Policy Analyst, phone: 978–281–9104.

To obtain the FW 48, FW 50, or Sector Operations Plans interim rules, associated National Environmental Policy Act EAs, FRFA Analyses, and RIRs, visit NMFS Northeast Regional Office's Web site at: *http://www.nero.noaa.gov/sfd/sfdmulti.html,* or send a written request to: Sustainable Fisheries Division, NMFS Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION:

1. Background

NMFS published three separate interim rules containing various measures for the 2013 NE multispecies fishing year that began May 1, 2013. These rules implemented measures developed by the New England Fishery Management Council (Council) and NMFS associated with FW 48 (78 FR 26118; May 3, 2013), FW 50 (78 FR 26172; May 3, 2013), and Sector Operations Plans (78 FR 25591; May 2, 2013). These rules contain substantial background, explanation of the measures, responses to public comments received on the associated proposed rules, and regulatory text that is not repeated here. Public comment was requested on several measures within the interim rules. Specifically,

For FW 48:

- New status determination criteria for white hake
- Monitoring/attribution system for catches from the Eastern U.S./Canada Area

For FW 50:

- Re-estimation of Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder catch by scallop vessels
- Unused Annual Catch Entitlement (ACE) carryover accounting for FY2014 and beyond.

For Sector Operations Plans:

- A revised explanation of how at-sea monitoring coverage rates are derived
- Revisions to the exemptions from the number of gillnets imposed on Day gillnet vessels

This rule finalizes the interim measures as previously published for all but the interim Eastern U.S./Canada Area catch monitoring/attribution. The next section (section 2) briefly summarizes the final measures for those items that are unchanged from the interim rules. Section 3 provides information on the final Eastern U.S./Canada Area catch monitoring/attribution being implemented through this rule. Section 4 describes minor corrections to FW 48 and 50 implementing regulatory text being made through this rule.

2. Measures Unchanged From the FW 48, FW 50, and Sector Operations Plans Interim Rules

White Hake Status Determination Criteria

The criteria outlined in the May 3, 2013, FW 48 interim rule are implemented as final through this rule. The criteria are outlined in Table 1. One comment in support of the interim measures was received.

TABLE 1—STATUS DETERMINATION CRITERIA AND NUMERICAL ESTIMATES OF THE STATUS DETERMINATION CRITERIA FOR WHITE HAKE

Criteria	Biomass target	Minimum biomass threshold	Maximum fishing mortality threshold	
	$SSB_{40\%\ MSP}$	$\frac{1}{2}\ B_{target}$	$F_{40\%\ MSP}$	
Values	Biomass target (mt)	Minimum biomass threshold (mt)	Maximum fishing mortality threshold	MSY (mt)
	32,400	16,200	0.20	5,630

SSB = spawning stock biomass; MSP = maximum spawning potential; B = ca biomass; F = fishing mortality rate; MSY = maximum sustainable yield.

Scallop Vessel Yellowtail Flounder Catch Re-Estimation

As part of FW 50, the Council recommended that Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder be added to the annual re-estimation process of yellowtail flounder catch in the scallop fishery. This re-estimation process was originally adopted and implemented as part of FW 47 for GB yellowtail flounder beginning in FY 2012. NMFS inadvertently omitted adding the SNE/MA stock to the re-estimation process in the FW 50 proposed rule (78 FR 19368; March 29, 2013), so this addition was included in the FW 50 interim rule. This rule finalizes the addition of SNE/MA yellowtail flounder to the re-estimation process. No comments were received on this measure.

Unused Sector Annual Catch Entitlement (ACE) Carryover in FY 2014 and Beyond

This rule finalizes the carryover accounting concept as described in the FW 50 final rule and outlined in § 648.87(b)(1)(i)(G)(*1*) through (*5*). Prior to the start of FY 2014 and in subsequent years, NMFS will determine the appropriate *de minimus* amount of unused ACE carryover for the fishing year. The determination and rationale for the *de minimus* amount will be provided in subsequent notice-and-comment rulemaking prior to the start of the fishing year. In addition, sectors may continue to bring forward up to 10 percent of unused ACE to the subsequent fishing year. If the total fishery level annual catch limit (ACL) is not exceeded, the carried over ACE used will not result in accountability measures. If the total fishery level ACL is exceeded, the amount of carried over catch used above the fishery level ACL will be subject to accountability measure overage payback provisions as outlined in § 648.87(b)(1)(iii) *Sector.*

Accountability Measures

The interim measures contained substantially more detail than the proposed rule, including clarification of components for which the public had submitted comments. Because of these changes, we sought additional comments at the time the interim measures were implemented. No comments were received on the 2014 and beyond carryover interim measures.

The Council has included how to account for unused ACE carryover in its list of potential topics being developed as part of FW 51 for FY 2014 implementation. If the Council develops and recommends an acceptable carryover approach that would replace the approach finalized by this rule, the public will have opportunity to comment on those measures as part of a rulemaking proceeding prior to the start of FY 2014.

Explanation of At-Sea Monitoring Coverage Rates Derivation

In response to comments on the explanation outlined in the FY 2013 Sector Operations Plans proposed rule (78 FR 16220; March 14, 2013), NMFS provided a revised summary of the methods used to derive at-sea monitoring levels in the interim rule, but did not change the level of ASM coverage needed for the sector fishery. NMFS published the determination of the at-sea monitoring level as an interim measure so the public could consider and comment on the expanded analysis justifying the ASM coverage level. No comments were received on the revised justification. The description and associated adequacy of the at-sea coverage rates that result from the methodology is currently the subject of litigation in *Oceana* v. *Blank et. al., 1:13-cv-00770.* No comments were submitted on the interim measures.

Day Gillnet Vessel Sector Exemption Revisions

This rule finalizes the seasonal periods that Day gillnet vessels are not exempt from the maximum number of gillnets, as outlined in the FY 2013 Sector Operations Plans interim rule. These periods, designed to reduce the potential interaction of gillnet gear with spawning aggregations of Atlantic cod, were developed in response to concerns raised on the proposed rule. NMFS had initially proposed to exempt Day vessels from the maximum number of gillnets for the entire fishing year. Some comments received on the proposed rule raised substantial concerns about the impact such an exemption could have on spawning cod. NMFS agreed with the concerns raised by the commenters and, as such, implemented the interim measures outlined. Comments were sought because the interim measures that retained gillnet limits during spawning periods differed from the proposed rule, which would have granted the exemption year-round. No comments were received on this interim measure.

3. Eastern U.S./Canada Area Catch Monitoring/Attribution

NMFS proposed changes to the Eastern U.S./Canada Area quota monitoring/attribution in the FW 48 proposed rule (78 FR 18188; March 25, 2013). Prior to FY 2013, the regulatory text for the catch monitoring/attribution program for Georges Bank (GB) cod and haddock required that all GB cod and haddock caught on a trip in which a vessel fishes in both the Western and Eastern areas be attributed to the Eastern area. In reality, NMFS attributed catch of these stocks to areas fished based on its understanding that the Amendment 16 intended this result and that the regulatory text inadvertently was left unchanged from pre-Amendment 16 measures.

In commenting on the proposed rule, the Council objected to the proposed revision stating it was inconsistent with the intent of Amendment 16 to the FMP. Because the proposed change was meant to reflect Council intent regarding Amendment 16, NMFS withdrew its proposed revision leaving the original

text in place. This change was noted as an interim measure and additional comments sought on it because it varied from the proposed rule.

NMFS received a second comment letter from the Council on the interim measure, retracting the first statement of intent, and supporting the originally proposed approach. The letter, dated May 9, 2013, clarified that the original text was inconsistent with the Council's intent for the quota monitoring/attribution program for GB cod and haddock in the Eastern U.S./Canada area established by Amendment 16 to the FMP. NMFS announced on July 10, 2013, that Eastern U.S./Canada Area catch monitoring/attribution was being changed from the interim method to a system that apportions catch based on area fished, consistent with the recommendation of the Council and the proposed rule measure. Comments were received on the interim measures (see Response to Comments).

NMFS also intends to propose, through separate rulemaking, that vessels declared to fish in the Eastern U.S./Canada Area submit daily VMS catch reports. This type of reporting requirement change is within the authority granted to the Regional Administrator. More information on why NMFS believes daily catch reports would enhance quota monitoring/attribution and enforcement will be provided in the upcoming proposed rule.

4. Minor Corrections to FW 48 and 50 Final Rules

The regulatory text in the Framework 48 interim final rule contained errors that are corrected through this final rule to accurately reflect the intent of Framework 48. The regulatory text of § 648.90(a)(5)(i)(D)(*2*), the accountability measure (AM) for Atlantic halibut, in the proposed rule and interim final rule incorrectly omitted the prohibition on possession of Atlantic halibut when the overall annual catch limit (ACL) is exceeded. This AM was implemented by FW 47 and intended to be retained by FW 48 as part of the revised AMs for this stock. The preamble of the FW 48 proposed and interim final rules accurately reflected the intent of Framework 48. This final rule corrects the regulations to make clear that possession of Atlantic halibut is prohibited when the AM for this stock is in effect.

The remaining corrections described below were largely editorial. In § 648.86(a)(3)(ii)(A)(*4*) the period that was incorrectly inserted after "NE" is removed. In § 648.87(b)(1)(ii)(F), excess parentheses are removed from footnotes 2 and 3 for the Gulf of Maine (GOM) Winter Flounder Stock Area coordinates, and the N. latitude for Point 5 in the coordinate table is made a superscript. A cross reference to at-sea monitoring requirements in paragraph § 648.87(b)(5)(iii)(A) is updated. A cross reference to dockside monitoring regulations, which were removed by FW 48, is removed from § 648.87(c)(2)(i). In § 648.90(a)(4)(iii)(E), the regulations regarding a SNE/MA windowpane flounder sub-ACL for the Atlantic sea scallop fishery, an incorrect reference to GB yellowtail flounder is corrected to SNE/MA windowpane flounder. References to an AM for SNE/MA winter flounder is removed from the list of non-allocated stock AMs in § 648.90(a)(5)(i)(D), because this stock was allocated by FW 50. Although the FW 50 final regulatory text correctly removed the SNE/MA winter flounder non-allocated stock AM at § 648.90(a)(5)(i)(D)(*4*), this paragraph had inadvertently been left in the regulations. This final rule removes the SNE/MA winter flounder non-allocated stock AM at § 648.90(a)(5)(i)(D)(*4*).

Comments and Responses

Thirteen comments were received on the interim measures as previously described. Six comments, including the Council and the State of Maine, supported using the attribution of catch by area fished method being finalized by this rule for the Eastern U.S./Canada Area catch monitoring/attribution. Four comments supported the interim measures for Eastern U.S./Canada Area monitoring/attribution. One commenter supported the interim rule white hake status determination criteria in addition to commenting on the U.S./Canada Area monitoring/attribution. Some comments were directed at issues outside the scope of the interim measures. Only comments that directly addressed the interim measures are addressed. Comments received on the proposed FW 48 and 50 and Sector Operations Plans rules were responded to in full in the respective interim rules for these actions and are not repeated here.

Comment 1: Four comments supported the interim measures for Eastern U.S./Canada Area monitoring/attribution of catch for Georges Bank cod and haddock. For clarity, this is the system that attributed all catch of cod, haddock, and yellowtail flounder caught on a trip that fishes both inside and outside of the Eastern U.S./Canada Area to the U.S./Canada TACs.

These comments stated that any system that does not attribute all subsequent catch to the Eastern U.S./Canada Area, including that caught in other areas after a vessel exits the area, encourages misreporting of catch (i.e., Eastern Area fish reported as Western Area). Some of the commenters stated that 100 percent observer coverage should be required on all Eastern U.S./Canada Area trips; others stated that vessels declaring trips to the Eastern U.S./Canada Area should have the option to request an observer.

Response: The regulatory changes to the method for attributing catch in the Eastern U.S. Canada are being implemented to clarify the Council's intent for the method in Amendment 16 to the Northeast Multispecies FMP. Nevertheless, NMFS disagrees that the interim measures are necessary for continued quota monitoring/attribution of Eastern U.S./Canada Area catches and NMFS is implementing the system originally proposed in the FW 48 proposed rule (78 FR 18188). Under this system NMFS uses VMS, VTR, and interactive voice recording (IVR) data to attribute catches to the areas fished. This system is called catch attribution by area fished.

The system proposed initially was the standard practice in place since FY 2010 which, at the time, was based on NMFS' interpretation of Council intent in Amendment 16. When the Council provided a strong statement of its intent on the proposed rule, NMFS implemented the interim measures that attribute all catch to the Eastern U.S./Canada Area. As such, it was possible for a vessel's catch from nonadjacent areas to be attributed to the Eastern U.S./Canada Area. To some, this did not appear to make sense but it was stated as the Council's intent. The subsequent clarification revised the Council intent. Moreover, NMFS believes that the attribution by area fished method being finalized here makes good sense and has strong merit. Under the system being finalized here, catch is attributed to the actual areas where fishing occurs.

The commenters supporting the continuation of the interim measures raise concerns that use of any other system to monitor catches will lead to misreporting. NMFS shares concerns that catch reporting must be accurate to ensure effective quota monitoring/attribution. NMFS believes that the catch attribution by area fished and VMS catch reporting help to accurately track catch against quotas and to dissuade misreporting. To better enhance catch monitoring/attribution and enforcement, NMFS will be proposing, through separate rulemaking, to use Regional Administrator authority to require vessels declared to fish in the Eastern U.S./Canada Area to submit daily catch reports though VMS.

These commenters also expressed a desire for greater at-sea monitoring/attribution of trips to the Eastern U.S./Canada Area. NMFS is paying to provide monitoring on 22 percent of the FY 2013 sector fishing trips. The percent coverage was derived consistent with the methodology established by Amendment 16 and as outlined in the 2013 at-sea coverage level determination analytical summary (*http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf*) which takes into account all provisions of the Magnuson-Stevens Act. Trips to the Eastern U.S./Canada Area may be randomly selected from the 22 percent available. At this time, NMFS has insufficient resources to fully fund and staff 100 percent at-sea monitoring. Similarly, the ability to request at-sea monitoring for trips to the Eastern U.S./Canada Area could bias the selection process and result in coverage shortfalls in other areas of the fishery. As previously stated, NMFS believes that the combination of catch attribution by area fished and the forthcoming proposed rule to require daily catch reporting through VMS will be sufficient to dissuade misreporting.

In addition, the Council's Groundfish Plan Development Team (PDT) was tasked by the Council to try and ascertain if misreporting was occurring and, if so, to what extent. The PDT examined the differences between VTR and VMS data, the differences in VTR and observer data, catch rates on observed trips, tow start and end locations, annual catch entitlement leasing activity, and other data to try and ascertain if misreporting has occurred or if vessels selected for observer coverage have avoided fishing in the Eastern U.S./Canada Area. The PDT concluded in an April 15, 2013, memo to the Council's Groundfish Oversight Committee:

> After reviewing the analyses, the PDT concluded that there is some evidence that there are differences in fishing behavior between the Eastern and Western Georges Bank Areas, and between observed and unobserved trips. The analyses do not identify a specific cause, and while some of the results may be consistent with the hypothesis that misreporting is occurring, others are not. The PDT concluded that the analyses were inconclusive in determining if misreporting is occurring. It is not possible to quantify how these differences may affect catch estimates for Eastern Georges Bank cod.

The PDT indicated that the incentive to misreport was strong, given the low Eastern Georges Bank catch limit and provided several recommendations that might help improve reporting compliance. NMFS updated the VTR instructions on recording within the last year. This is responsive to one of the PDT's recommendations. The upcoming rule proposing daily VMS catch reporting is also consistent with PDT recommendations to improve reporting compliance.

In summary, NMFS believes that the catch attribution by area fished methodology being implemented by this rule is consistent with Council intent in Amendment 16 and is a sound approach that is adequate for Eastern U.S./Canada Area quota monitoring/attribution. Random observer coverage, VMS, VTR, and IVR information are all used in this monitoring/attribution system and, when paired with random observer coverage and daily VMS reporting in the future, will sufficiently enhance monitoring/attribution and compliance.

Comment 2: Six comments supported the U.S./Canada Area quota monitoring/attribution/attribution methodology as outlined in the FW 48 proposed rule, apportionment by area fished.

Response: NMFS agrees with these commenters and has already implemented the use of the FW 48 proposed quota monitoring/attribution method. This rule codifies the regulatory changes necessary to effect this change permanently.

Changes From the Interim Rules

As previously outlined, this rule finalizes the Eastern U.S./Canada Area catch reporting methodology originally proposed for FY 2013: Catch attribution by area fished.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the management measures implemented in this final rule are necessary for the conservation and management of the NE multispecies fishery and consistent with the Magnuson-Stevens Act, and other applicable law.

The measures of the FW 50 interim rule were previously determined to be significant for purposes of Executive Order (E.O.) 12866. The measures of FW 48 were previously determined to not be significant under E.O. 12866. The E.O. 12866 criteria did not apply to the Sector Operations Plans rule as it contained no implementing regulatory text. Finalization of the interim measures through this rule does not modify or otherwise change these determinations.

This final rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Pursuant to the Regulatory Flexibility Act, and prior to the Small Business Administration's (SBA) June 20, 2013, final rule, Final Regulatory Flexibility Analyses (FRFAs) were prepared for these actions when implemented as interim measures, as required by section 604 of the Regulatory Flexibility Act, as part of the regulatory impact review. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective on July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from $ 4.0 to 19.0 million, Shellfish Fishing from $ 4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. Id. at 37400 (Table 1).

The analyses for this action used SBA's former size standards. The FRFAs describe the economic impact the interim rules have on small entities. NMFS has determined that the new size standards do not affect the previously completed FRFAs. Similarly, finalization of the interim measures by this rule does not change the previously completed FRFAs. Each of the statutory requirements of section 604(b) and (c) were addressed and summarized in the Classification sections of the FW 48, FW 50, and Sector Operations Plans interim rules. As such, the FRFA analyses are not repeated here.

A small entity compliance guide for the interim measures, as required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, was issued on April 30, 2013. This rule finalizing the interim measures makes no changes except for all but the Eastern U.S./Canada Area quota monitoring/attribution system; therefore, NMFS is not re-issuing the previously distributed compliance guide. Small entities have been operating under the interim measure since May 1, 2013, and this rule changes only the interim Eastern U.S. Canada Area quota monitoring/attribution measures, as previously described in the preamble of this rule. Redistributing the previously issued compliance guide would likely result in confusion. An additional small entity compliance guide announcing the changes to the Eastern U.S./Canada Area quota monitoring/attribution was issued on July 9, 2013. These small entity compliance guides were sent to all holders of Federal permits issued for the NE multispecies fisheries, as well as the scallop and herring fisheries that receive an allocation of some groundfish stocks. In addition, copies of this final rule and guides (i.e., information bulletins) are

available from NMFS (see **ADDRESSES**) and at the following Web site: *http://www.nero.noaa.gov/*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 23, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.85, revise the introductory text of paragraph (a)(3)(ii)(A) to read as follows:

§ 648.85 Special management programs.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished for the entire trip, and the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. A vessel on a sector trip may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*3*) of this section. When a vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod and haddock caught on that trip will be apportioned by area fished, as determined by all available data sources, and those portions of the catch taken inside the Eastern U.S./Canada Area shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

* * * * *

■ 3. In § 648.86, revise paragraph (a)(3)(ii)(A)(*4*) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) * * *

(*4*) The haddock incidental catch caps specified are for the NE multispecies fishing year (May 1–April 30), which differs from the herring fishing year (January 1–December 31). If the haddock incidental catch allowance is attained by the herring midwater trawl fishery for the GOM or GB, as specified in § 648.85(d), the 2,000-lb (907.2-kg) limit on herring possession in the applicable AM Area, as described in paragraph (a)(3)(ii)(A)(*2*) or (*3*) of this section, shall be in effect until the end of the NE multispecies fishing year. For example, the 2011 haddock incidental catch cap is specified for the period May 1, 2011–April 30, 2012, and the 2012 haddock catch cap would be specified for the period May 1, 2012–April 30, 2013. If the catch of haddock by herring midwater trawl vessels reached the 2011 incidental catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2012), the 2,000-lb (907.2-kg) limit on possession of herring in the applicable AM Area would extend through April 30, 2012. Beginning May 1, 2012, the 2012 catch cap would go into effect.

* * * * *

■ 4. In § 648.87, revise paragraphs (b)(1)(ii)(F) and (b)(5)(iii)(A), and the introductory text of paragraph (c)(2)(i), to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(F) *GOM Winter Flounder Stock Area.* The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

GOM Winter Flounder Stock Area

Point	N. Latitude	W. Longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	67°40′
4	(2)	67°40′
5	(3)	67°40′
6	43°50′	67°40′
7	43°50′	4
8	(4)	67°00′
9	(5)	67°00′

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.

(2) U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.)

(3) U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.)

(4) U.S./Canada maritime boundary.

(5) Intersection of the south-facing ME coastline and 67°00′ W. long.

* * * * *

(5) * * *

(iii) * * *

(A) *Vessel requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(5)(iii)(B)(*1*) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(c) * * *

(2) * * *

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific time and areas within the NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting

requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined at § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed Area II, as defined at § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with any Sector Rolling Closure Areas, as defined at § 648.81(f)(2)(vi). This list may be modified through a framework adjustment, as specified in § 648.90.

* * * * *

■ 5. In § 648.90, revise paragraph (a)(4)(iii)(E), paragraph (a)(5)(i)(D) introductory text, and paragraph (a)(5)(i)(D)(*2*), and remove and reserve paragraph (a)(5)(i)(D)(*4*) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(4) * * *

(iii) * * *

(E) *SNE/MA windowpane flounder catch by the Atlantic sea scallop fishery.* SNE/MA windowpane flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. The Atlantic sea scallop fishery shall be allocated 36 percent of the SNE/MA windowpane flounder ABC in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

* * * * *

(5) * * *

(i) * * *

(D) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, or Atlantic wolffish was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in a subsequent fishing year, consistent with the APA. If reliable information is available, the AM shall be implemented in the fishing year immediately following the fishing year in which the overage occurred. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined before the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded by the groundfish fishery in fishing year 2012, the applicable AM would be implemented for fishing year 2013. If NMFS determined after the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an ACL was not exceeded, the AM will be rescinded, consistent with the Administrative Procedure Act.

* * * * *

(*2*) *Atlantic halibut.* If NMFS determines the overall ACL for Atlantic halibut is exceeded, as described in this paragraph (a)(5)(i)(D)(*2*), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented and any vessel issued a NE multispecies permit or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Halibut Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

ATLANTIC HALIBUT TRAWL GEAR AM AREA

Point	N. Latitude	W. Longitude
1	42°00′	69°20′
2	42°00′	68°20′
3	41°30′	68°20′
4	41°30′	69°20′

ATLANTIC HALIBUT FIXED GEAR AM AREA 1

Point	N. Latitude	W. Longitude
1	42°30′	70°20′
2	42°30′	70°15′
3	42°20′	70°15′
4	42°20′	70°20′

ATLANTIC HALIBUT FIXED GEAR AM AREA 2

Point	N. Latitude	W. Longitude
1	43°10′	69°40′
2	43°10′	69°30′
3	43°00′	69°30′
4	43°00′	69°40′

(*3*) * * *

(*4*) [Reserved]

* * * * *

[FR Doc. 2013–21065 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XC832

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2013 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 26, 2013, through 2400 hrs, A.l.t., December 31, 2013. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 10, 2013.

ADDRESSES: You may submit comments on this document, identified by 2012–0210, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0210*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

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

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

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on February 7, 2013 (78 FR 9328, February 8, 2013).

NMFS has determined that as of August 23, 2013, approximately 350 metric tons of Pacific cod remain in the 2013 Pacific cod apportionment for catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2013 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 23, 2013.

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

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 10, 2013.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: August 26, 2013.

Kelly Denit,

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

[FR Doc. 2013–21137 Filed 8–26–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 168
Thursday, August 29, 2013

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–13–0011; NOP–13–01 PR]

RIN 0581–AD32

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing); Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to the proposed rule that was published on August 22, 2013, 78 FR 52100. In the proposed rule, the Regulatory Information Number (RIN) appears as RIN 0581–AD33. This number is incorrect. The correct number is 0581–AD32. This document corrects the proposed rule.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, Telephone: (202) 720–3252.

Correction

In proposed rule FR Doc. 2013–20476, beginning at page 52100 of the issue published August 22, 2013, make the following correction. On page 51200, third column, correct the RIN to read 0581–AD32.

Dated: August 23, 2013.

Rex Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–21049 Filed 8–28–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–13–0001]

RIN 0563–AC24

Common Crop Insurance Regulations; Forage Seed Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add a provision to its regulations that provides forage seed insurance. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions (Basic Provisions), which contain standard terms and conditions common to most crop programs. The intended effect of this action is to convert the Forage Seed pilot crop insurance program to a permanent insurance program for the 2015 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 30, 2013, and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–13–0001, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Tim Hoffman, Director, Actuarial and Product Design Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64141–6205.

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 submission. 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: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

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

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to

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

Executive Order 13132

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

Executive Order 13175

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

Regulatory Flexibility Act

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

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

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

Environmental Evaluation

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

Background

FCIC offered a pilot crop insurance program for forage seed beginning with the 2002 crop year. The pilot program was initially offered in 10 counties in California, Idaho, Montana, Nevada, Oregon, Washington and Wyoming. In the initial year, the program insured 104 producers and approximately 11,000 acres. Following an evaluation of the Forage Seed pilot program in 2006, FCIC's Board of Director's approved continuation and expansion until such time the program could be made permanent. In 2007, program changes included 2 additional counties and changes in the dates of the insurance period for Montana and Wyoming. Currently the provisions insure only forage seed that is contracted or grown as certified forage seed. All of the forage seed covered under the pilot program is alfalfa seed. For the 2012 crop year, 179 policies were sold and approximately 23,900 acres insured. This proposed rule will add the forage seed program to the code of federal regulations.

List of Subjects in 7 CFR Part 457

Crop Insurance, Forage Seed, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2015 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Section 457.174 is added to read as follows:

§ 457.174 Forage Seed crop insurance provisions.

The forage seed crop provisions for the 2015 and succeeding crop years are as follows:

FCIC Policies: United States Department of Agriculture, Federal Crop Insurance Corporation

Forage Seed Crop Provisions

1. Definitions.

Actual value. The dollar value received, or that could be received, for the forage seed if the forage seed production is properly handled in accordance with the requirements in the forage seed contract or the applicable certifying agency's requirements.

Adequate stand. A population of live plants that equals or exceeds the minimum required number of plants per square foot as shown in the actuarial documents.

Amount of insurance. The amount obtained by multiplying the production guarantee per acre for each type and practice in the unit by the insured acreage of that type and practice, by the applicable base price, and by the percentage of base price you elected. The total of these results will be the amount of insurance for the unit.

Base price. For seed under a forage seed contract, the price per pound (excluding any discounts or incentives that may apply) stated in the forage seed contract. For certified forage seed not under a forage seed contract, and for forage seed producers who are also forage seed companies, the price contained in the actuarial documents.

Certification application. The form used to request certification of forage seed by the certifying agency.

Certification standards. The standards and procedures of the certification agency to assure genetic purity and identity of the seed certified.

Certified forage seed. Forage seed that meets the certification standards administered by a certifying agency at the time of harvest and that has been grown under a certification application accepted by the certifying agency on or before the acreage reporting date.

Certifying agency. An agency authorized under the laws of a State, Territory, or possession, to officially certify seed, which has standards and procedures to assure the genetic purity and identity of the seed certified, and approves certification applications for the certified forage seed that meets the certification standards at time of harvest.

Established stand. An adequate stand of live plants for crop years after the seed-to-seed year.

Fall planted. Forage seed crop planted after May 31 of the previous crop year.

Forage seed company. A business enterprise that possesses all licenses for marketing forage seed required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and capacity to accept and process the insured crop timely.

Forage seed contract. A written contract executed between the forage seed crop producer and a forage seed company containing, at a minimum:

(a) The producer's commitment to plant, grow, and deliver the forage seed produced from such plants to the seed company;

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

(c) Either a fixed price per unit of the forage seed or a formula to determine the price per unit value of such seed. Any formula for establishing value must be specified in the written contract. If the formula uses a future price that is settled after the applicable acreage reporting date, then the base price contained in the actuarial documents will apply.

Forage seed crop. Small seeded legume plants grown for seed (e.g., alfalfa, clovers, etc.) shown in the actuarial documents.

Harvest. Removal of seed from the windrow or field.

Pound. Sixteen (16) ounces avoirdupois.

Price election. In lieu of the definition in section 1 of the Basic Provisions, the price election will be the base price and used for the purposes of determining premium and indemnity under the policy.

Qualified seed testing laboratory. Laboratory qualified by the State to test the forage seed to determine whether it qualifies as certified forage seed.

Seed-to-seed year. The calendar year in which planting occurs for spring planted forage seed and the subsequent calendar year for fall planted forage seed.

Spring planted. Forage seed crop planted before June 1 of the current crop year.

2. Unit Division.

In lieu of the optional unit provisions in section 34 of the Basic Provisions, you may select optional units by forage seed contract or variety if permitted by the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may elect only one percentage of base price and one coverage level for each forage seed crop grown in the county and designated in the actuarial documents. If separate base prices are available by forage seed crop type, the percentage election of base price and coverage level you choose for each forage seed crop type must be the same. For example, if you choose 100 percent of the base price and 65 percent coverage level for a specific forage seed crop type, you must choose 100 percent of the base price and 65 percent coverage level for all the forage seed crop types.

(b) For each unit, separate guarantees will be determined by forage seed crop type and practice.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is June 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

California and Nevada	October 31;
All Other States	September 30.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must submit to us a copy of your forage seed contract for your contracted forage seed acreage or, if not contracted, a copy of the accepted certification application for your certified seed acreage on or before the acreage reporting date. Failure to provide a copy of the forage seed contract or the certification application accepted by the certifying agency by the acreage reporting date will result in denial of liability and no indemnity due.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all types and practices of each forage seed crop you elect to insure, that is grown in the county and for which a premium rate is provided by the actuarial documents:

(1) In which you have a share; and

(2) That is grown solely for harvest as:

(i) Certified forage seed; or

(ii) Seed grown under a forage seed contract executed on or before the acreage reporting date.

(b) For contracted acreage of forage seed crops only, you will not be considered to have a share in the insured crop unless, under the terms of the forage seed contract, you are at risk of a financial loss at least equal to the amount of insurance on such acreage.

(c) In addition to the crop and acreage listed as not insured in sections 8 and 9 of the Basic Provisions, we will not insure any forage seed crop that:

(1) Is interplanted with another crop, unless otherwise specified in the Special Provisions;

(2) Is planted into an established grass or legume;

(3) Does not have an adequate stand at the beginning of the insurance period;

(4) Exceeds the age limitations for the forage seed crop or type contained in the Special Provisions; or

(5) Is utilized for any purpose during the crop year other than for seed production.

(d) A forage seed producer who is also a forage seed company may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions; and

(2) All the forage seed grown by the forage seed company is enrolled with the appropriate certifying agency.

8. Insurance Period.

(a) Insurance attaches on acreage with an adequate stand on the later of the date we accept your application or the applicable date as follows, unless provided otherwise in the Special Provisions:

(1) For fall planted seed-to-seed year and established stands of forage seed crops, coverage begins for each crop year on:

(i) October 1 for counties in Idaho, Montana, Oregon, Washington, Wyoming and other states; and

(ii) November 1 for counties in California and Nevada.

(2) For spring planted seed-to-seed year stands of forage seed crops coverage begins:

(i) May 1 for counties in California and Washington; and

(ii) May 15 for counties in Idaho, Montana, Nevada, Oregon, Wyoming and other states.

(b) The calendar dates for the end of the insurance period for counties in the following states are as follows unless otherwise provided in the Special Provisions:

(1) California and Nevada October 31.

(2) Idaho, Oregon, Montana, Washington, Wyoming and all other states September 30;

9. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects and plant disease, but not damage due to insufficient or improper application of control measures;

(4) Wildlife;

(5) Earthquake;

(6) Volcanic eruption; or

(7) Failure of the irrigation water supply, if caused by a peril specified in sections 9(a)(1) through (6) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) The crop not being timely harvested, unless such delay in harvesting is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (6);

(2) Insufficient supply of pollinators, as determined by us, unless lack of pollinators or pollination is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (7);

(3) Failure of the certification standard or forage seed company contract acceptance caused by failure to follow proper isolation requirements or inadequate weed control, as determined by us, unless such failure is solely and directly due to a cause of loss specified in sections 9(a)(1) through (6); or

(4) Failure of the certification standard or forage seed contract acceptance due to failure to follow all other certification or contract requirements, as determined by us, unless such failure is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (6).

10. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage to your forage seed crop covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type and practice by the production guarantee;

(2) Multiplying each result in section 10(b)(1) above by the price election;

(3) Totaling the results in section 10(b)(2);

(4) Multiplying the total production to count for each type and practice by the price election;

(5) Totaling the results of each crop type in section 10(b)(4);

(6) Subtracting the result in section 10(b)(5) from the result in section 10(b)(3); and

(7) Multiplying the result in section 10(b)(6) by your share.

(c) The total forage seed production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached and if:

(A) You do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisals made prior to giving consent to put the acreage to another use will be used to determine the amount of production to count);

(B) You elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage in accordance with section 10(e).

(d) In addition to the provisions of section 15 of the Basic Provisions, we may determine the amount of production of any unharvested forage seed on the basis of our field appraisals conducted after the normal time of harvest for the area. If the acreage is later harvested, production records must be provided and if the harvested production exceeds the appraised production, the claim will be adjusted.

(e) Production not meeting the minimum quality requirements contained in the forage seed contract or certifying agency's standards based on tests conducted by a qualified seed testing laboratory due to insurable causes will be reduced as follows:

(1) Divide the actual value by the base price for the insured type; and

(2) Multiply the result (not to exceed 1.0) by the number of pounds of such production.

Example: You have a 100 percent share and 100 acres of forage seed in the unit, with a guarantee of 600 pounds per acre on 75 acres of an established stand of forage seed and a guarantee of 300 pounds per acre on 25 acres of a spring planted seed-to-seed year stand. All acreage is contracted with a base price of $1.20 per pound and you have selected 100 percent of the base price. Losses due to insured causes of loss have reduced production and quality and you only harvested 37,000 pounds of seed. A portion of the total production was of poor quality; 10,000 pounds of seed failed to achieve the contract minimum germination requirement; and the salvaged production was valued at $0.80 per pound. Your indemnity would be calculated as follows:

(1) 75 acres × 600 pounds = 45,000 pound guarantee
25 acres × 300 pounds = 7,500 pound guarantee;
(2) 45,000 pounds × $1.20 per pound price election = $54,000 value guarantee
7,500 pounds × $1.20 per pound price election = $9,000 value guarantee;
(3) $54,000 + $9,000 = $63,000 total value of the guarantee;
(4) 27,000 pounds met the contract quality requirements = 27,000 pounds production to count
27,000 pounds × $1.20 per pound = $32,400
10,000 pounds × ($0.80 per pound/$1.20

per pound) = 6,667 pounds production to count
6,667 pounds × $1.20 per pound = $8,000;
(5) $32,400 + $8,000 = $40,400 total value of production to count;
(6) $63,000 − $40,400 = $22,600 loss; and
(7) $22,600 × 100% share = $22,600 indemnity payment.

11. Late and Prevented Planting.

The late and prevented planting provisions of the Basic Provisions are not applicable for forage seed.

Signed in Washington, DC, on August 20, 2013.

Brandon Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2013–20802 Filed 8–28–13; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2012–BT–TP–0016]

RIN 1904–AC76

Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: On July 10, 2013, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) for test procedures for refrigerators, refrigerator-freezers, and freezers in the **Federal Register**. This document announces an extension of the public comment period for submitting comments on two specific issues on which DOE had sought comment. The comment period on all other issues in the NOPR remains unchanged.

DATES: DOE will accept comments, data, and information regarding this rulemaking published July 10, 2013 (78 FR 41610) received no later than September 23, 2013, except on the items specified in this notice, for which DOE will accept comments, data, and information until no later than January 31, 2014.

ADDRESSES: Any comments submitted must identify the NOPR for test procedures for refrigerators, refrigerator-freezers, and freezers and provide docket number EERE–2012–BT–TP–0016 and/or Regulation Identification Number (RIN) 1904–AC76, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Res-Refrig-Freezer-2012-BT-TP-0016@ee.doe.gov.* Include the docket number EERE–2012–BT–TP–0016 and/or RIN 1904–AC76 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/75.*

This Web page contains links to supporting materials and information for this rulemaking on the regulations.gov site. The regulations.gov Web page contains instructions on how to access all documents in the docket, including public comments.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1317. Email: *Lucas.Adin@ee.doe.gov.*

In the Office of the General Counsel, contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

On July 10, 2013, DOE published a notice of proposed rulemaking (NOPR) that would amend the test procedures for residential refrigerators, refrigerator-freezers, and freezers (collectively, residential refrigerators). (78 FR 41610) That notice provided a comment deadline of September 23, 2013. On August 7, 2013 the Association of Home Appliance Manufacturers (AHAM) requested that DOE extend this comment period for two very specific issues raised in the July notice. Those issues, which involved DOE's proposed inclusion of an icemaking test procedure (Issue Item 2) along with the possible inclusion of certain testing requirements for built-in residential refrigerators (Issue Item 15), would, in AHAM's view, require additional time for manufacturers to fully evaluate. (AHAM Comment Extension Request, No. 24). AHAM requested an extension of the comment period until January 31, 2014. (*See* 78 FR at 41658 and 78 FR at 41661). AHAM recommended that the comment period on the other issues in the NOPR remain open until September 23, 2013. In its request, AHAM stated that this extension was necessary due to the timing of the NOPR, which was published while manufacturers were preparing their annual DOE certification reports. AHAM also noted that manufacturers are in the process of product development and testing in preparation for the amended energy conservation standards, the compliance date of which is September 15, 2014. Because of these issues, AHAM stated that manufacturers would need additional time to perform laboratory testing to evaluate the proposals in the NOPR.

Because DOE is likely to rely to a significant extent on the data and information that manufacturers provide in making any final determinations on these issues, DOE has determined that an extension of the public comment period is appropriate and is hereby extending the comment period on the issues identified by AHAM. DOE will consider any comments on Items 2 and 15 in section E of the July 10, 2013 NOPR that are received by midnight on January 31, 2014, and deems any comments received by that time on these issues to be timely submitted. For all other issues in the NOPR, DOE will consider any comments received by midnight on September 23, 2013, and deems any comments on all other remaining issues that are received by that time to be timely submitted.

DOE notes that the granting of this extension will likely lengthen the time necessary for finalization of any

proposals regarding the items for which the comment extension was granted. Because the other items in the NOPR may affect the manner in which manufacturers perform the test procedures for compliance with the amended energy conservation standards, which DOE understands some manufacturers may begin using well in advance of the September 15, 2014 compliance date, DOE believes it necessary to finalize those proposals as expeditiously as is feasible. Accordingly, DOE may finalize a rule that addresses all issues other than Items 2 and 15 (i.e. the icemaking test procedure and additional testing requirements for built-in refrigerators) prior to the resolution of these two items.

DOE also notes that the extension of the comment period for these two items will not exceed the 270-day comment period limit imposed by EPCA. See 42 U.S.C. 6293(b)(2).

Issued in Washington, DC, on August 23, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–21115 Filed 8–28–13; 8:45 am]

BILLING CODE 6450–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

RIN 0412–AA71

Partner Vetting in USAID Assistance

AGENCY: United States Agency for International Development.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Agency for International Development (USAID) proposes to amend its regulation governing the administration of USAID-funded assistance awards to implement a Partner Vetting System (PVS). The purpose of the Partner Vetting System is to help ensure that USAID funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners. In order to apply the PVS to USAID assistance, USAID proposes to amend 22 CFR Part 226. The Office of Management and Budget has approved a 30 day comment period. This proposed regulatory revision is a key requirement of the Agency's plan for the pilot program and any other vetting programs.

DATES: Submit comments on or before September 30, 2013.

ADDRESSES: Because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington, USAID recommends sending all comments by electronic mail or by fax to the email address or fax number listed directly below (please note, all comments must be in writing to be reviewed).

Electronic Access and Filing. You may submit written electronic comments by sending electronic mail [email] to: *M.OAA.RuleMaking@usaid.gov.*

Please submit comments as a Microsoft Word file avoiding the use of any special characters and any form of encryption.

Surface Mail (again, not advisable due to security screening): Michael Gushue, M/OAA/P, USAID/Washington, 1300 Pennsylvania Avenue NW., Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Michael Gushue, Telephone: 202–567–4678, Email: *mgushue@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Executive Summary

The Purpose of Regulatory Action: The purpose of this regulatory action is to amend 22 CFR Part 226, Administration of Assistance Awards to U.S. Non-Governmental Organizations, to add new pre-award and award terms. The new terms will implement procedures for a new Partner Vetting System.

A Summary of the Provisions: There are two provisions included in this amendment to 22 CFR Part 226. The first is an application provision, Partner Vetting Pre-Award Requirements, which delineates the vetting process and the applicant's responsibilities for submitting information on individuals who will be vetted, prior to award. The second is an award term, Partner Vetting, which sets forth the recipient's responsibilities for vetting during the award period, and the partner vetting process that takes place after award.

Costs and Benefits: USAID has determined that this Rule is not an "economically significant regulatory action" under Section 3(f)(1) of Executive Order (E.O.) 12866. However, as this rule is a "significant regulatory action" under Section 3(f)(4) of the E.O., USAID submitted it to OMB for review.

This regulatory action will help USAID meet its fiduciary responsibilities by helping to ensure that agency funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists.

USAID estimates that Partner Vetting will add an additional 15 minutes to each of the 10,120 grant applications. We estimate the annual cost of implementing partner vetting for assistance is $31,676 for applicants, and $391,810 for the annual cost to the government.

B. Background

USAID is implementing a PVS pilot program for USAID assistance and acquisition awards. It is expected that this pilot program, which includes vetting of both acquisition and assistance solicitations and awards, will provide USAID (and the Department of State) with a more comprehensive understanding of ways to mitigate risk in the provision of foreign assistance as well as the feasibility and utility of implementing PVS worldwide. Because the pilot is intended to help further refine and adjust PVS, the need for any future amendments to USAID's assistance regulation, related to implementation of PVS, likely will not be determined until after the assessment of the PVS pilot program. The intention of the PVS is to help ensure that USAID funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners. USAID established the PVS as a new system of records pursuant to the Privacy Act of 1974 on July 17, 2007 (72 FR 39042). On May 6, 2009, USAID set the final effective date for exempting portions of the PVS from provisions of the Privacy Act as August 4, 2009 (74 FR 20871), although the Agency did not implement PVS at that time. USAID initiated rule-making to revise its acquisition regulation, 48 CFR chapter 7, publishing its final rule for making PVS applicable to acquisitions on February 14, 2012 (77 FR 8166) with an effective date of March 15, 2012.

At the time USAID initiated rulemaking for acquisition, USAID determined that its assistance regulations could accommodate pre-award vetting without revisions. Subsequently, however, as USAID refined its intent for PVS and clarified its goals and purpose, the Agency concluded that in order to apply PVS to assistance to the same extent as to acquisition by allowing for post-award vetting, the Agency needed to revise its assistance regulation, 22 CFR part 226. USAID's previous rule making generated numerous comments

regarding the proposed PVS program. As part of the rule making process for the Final Rule for Partner Vetting in USAID Acquisitions (77 FR 8166), published in the **Federal Register** on February 14, 2012, USAID provided a comprehensive response to all of the comments received during that rule making period. USAID seeks comments through this proposed rule to help ensure the successful implementation of PVS to USAID assistance by minimizing the impact on the Agency's programs and recipients while still protecting against the possibility that USAID funds could benefit terrorist groups.

Need for partner vetting. USAID set forth the rationale and need for partner vetting previously in its notice establishing PVS (72 FR 39042) and notice of proposed rulemaking for its acquisition regulation, 48 CFR chapter 7 (74 FR 30494). As stated therein, USAID already has taken a number of steps, consistent with applicable law and agency policy, to help ensure that agency funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. USAID recognized, however, that more can be done to ensure adequate due diligence in certain situations, and established PVS to complement its requirements for terrorist financing clauses, terrorist financing certifications, and review of public lists of designated groups and individuals.

USAID functions in areas of high terrorist activity, and vetting enables the Agency to enhance oversight of tax payer dollars by accessing intelligence and law enforcement databases as a further safeguard of program funds.

USAID currently conducts vetting programs in certain high [threat or risk—choose one] areas of the world. These vetting programs have proven successful in preventing funds going to unintended recipients and provide a further deterrent to individuals associated with terrorism applying for contracts and/or grants from USAID. However, USAID functions in other parts of the world where the risks differ from these locations. The Agency intends to use the PVS pilot program to inform decisions about the future application of vetting to agency programs.

Through the PVS, information collected from individuals, officers, employees, or other officials of organizations that seek to receive USAID funding will be used to conduct national security screening of such individuals and organizations to ensure that USAID funds do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. To properly conduct this screening, it is necessary to collect information on "key individuals"—the principal officers and other key employees and personnel of USAID contractors and recipients. Before USAID applies vetting to a particular planned award, it will perform a risk based assessment (RBA).

Risk based assessment. USAID will perform an RBA to determine the likelihood that the funds, goods, services, or other benefits to be provided could inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, including people or organizations who are not specifically designated by the U.S. Government but who may nevertheless be linked to terrorist activities. Key factors that USAID will consider in this assessment will include, but are not limited to, the nature of the program, the type of entity that will be implementing the activity (for example, U.S. Non-Governmental Organization (NGO), U.S. for profit organization, foreign NGO, foreign for profit organization, international organization), the geographic location of the activity, the safeguards available and how easily funds could be diverted or misused. Other considerations may include the urgency of the activity and the foreign policy importance of the activity. The Agency may identify through the RBA process that certain services the recipient procures from vendors are subject to vetting.

Although the details of any risk-based assessment will be dictated by the specific circumstances of each activity, the conclusion that a particular planned award is subject to partner vetting will be clearly stated in any solicitation or other comparable document for that activity.

The partner vetting process for assistance. USAID intends to apply PVS to assistance in a manner that protects the integrity of the selection process and also ensures that USAID's Office of Security (SEC) is able to obtain information necessary to vet key individuals and protect sensitive information from disclosure. To accomplish this, no individual involved in the selection process, including the agreement officer (AO), will have access to the information applicants submit for partner vetting, other than to confirm the key individuals the applicants have submitted. When vetting is required, a provision in the relevant solicitation will notify applicants of the vetting requirements and procedures. The AO will instruct applicants when to submit the completed USAID Partner Information Form, USAID Form 500–13 ("Form"), to the vetting official identified in the solicitation. Each Mission or office will have flexibility in determining the appropriate individual to be the vetting official, but in all cases the vetting official will be a U.S. citizen employee of USAID who is not involved in the selection process. In addition to receiving the completed Forms, the vetting official will be responsible for responding to questions from applicants about information to be included on the Form, coordinating with SEC, and conveying the vetting determination to each vetted applicant and the AO. The Form identifies the information required for the key individuals of the applicant and any subrecipients or vendors who are subject to vetting. Key individuals include principal officers of the organization's governing body (for example, chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees), the principal officer and deputy principal officer of the organization (for example, executive director, deputy director, president, vice president), the program manager or chief of party for the USG-financed program, and any other person with significant responsibilities for administration of the USG-financed activities or resources.

The AO determines the appropriate stage of the solicitation process for applicants to submit the Form to the vetting official as specified in the Request for Application (RFA) or Annual Program Statement (APS).

After a vetting determination has been made, the vetting official notifies the applicant or applicants that they either have passed or have not passed vetting. For applicants who have not passed, the vetting official will notify the applicant(s) of the vetting determination. USAID will determine what information may be released consistent with applicable law and Executive Orders, and with the concurrence of relevant agencies.

Concurrently, the vetting official also notifies the AO that all vetting determinations have been provided to the applicants. The vetting official indicates to the AO whether or not all applicants have passed vetting but will not provide the AO with specific vetting information.

Applicants who change any key individuals for any reason, including but not limited to failure to pass vetting or for reasons related to their applications, must submit a revised Form to the vetting official as soon as possible to allow for vetting of individuals not previously vetted. The AO makes the award decision

independently from the vetting process. The AO then confirms with the vetting official that the apparently successful applicant has passed vetting and proceeds with award. Only applicants who have passed the vetting process are eligible for award. If the AO is ready to make an award but the vetting official is unable to confirm that the apparently successful applicant has passed vetting, the AO will wait as long as is practicable for the vetting official's confirmation.

The AO will proceed with an award to the next apparently successful applicant in accordance with the evaluation criteria, provided that applicant also passes vetting.

To apply PVS to USAID assistance, USAID is amending 22 CFR Part 226, Administration of Assistance Awards to U.S. Non-Governmental Organizations.

B. Summary of the Proposed Rule

USAID is issuing a proposed rule to amend 22 CFR part 226 by adding a new subpart 226.92 to 22 CFR part 226, with an associated application provision and award term. The application provision, Partner Vetting Pre-Award Requirements, delineates the vetting process and the applicant's responsibilities for submitting information on individuals who will be vetted, prior to award. The award term, Partner Vetting, sets forth the recipient's responsibilities for vetting during the award period, and the partner vetting process that takes place after award.

The amendment will also add definitions to subpart 226.2.

C. Impact Assessment

Regulatory Planning and Review

Under E.O. 12866, USAID must determine whether a regulatory action is "significant" and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB).

USAID has determined that this Rule is not an "economically significant regulatory action" under Section 3(f)(1) of E.O. 12866. The application of the Partner Vetting System to USAID assistance will not have an economic impact of $100 million or more. The regulation will not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, nor public health or safety in a material way. However, as this rule is a "significant regulatory action" under Section 3(f)(4) of the E.O., USAID submitted it to OMB for review. We have also reviewed these regulations pursuant to Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866.

This regulatory action is needed for USAID to meet its fiduciary responsibilities by helping to ensure that agency funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. NGOs will provide information on key individuals when applying for USAID grants or cooperative agreements. This information will be used to screen potential recipients and key individuals. The screening will help ensure that funds are not diverted to individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. The final benefit to the public will be the increased assurance that Federal funds will not inadvertently provide support to entities or individuals associated with terrorism.

Although the primary benefit of vetting will be to prevent the diversion of USAID funds, implementing partners will benefit when their subrecipients have also been vetted and the prime recipient is working with legitimate organizations. In addition, as the vetting program becomes better known in the community, it will deter organizations associated with terrorism from applying for assistance funds.

We estimate that 10,120 assistance applicants currently spend 2,024,000 hours filling out paperwork for grant applications. We estimate the additional requirements for Partner Vetting will add 15 minutes to each application. This number is calculated based on the fact that the NGOs are already providing the majority of information used for screening. The calculation takes into the account the additional pieces of information required for vetting. There are no start-up, capital, operation, maintenance, or recordkeeping costs to applicants as a result of this collection.

The collection is essentially a clerical task involving employees whose wage rates we estimate average $12.50 dollars per hour. Therefore we estimate that the cost of implementing partner vetting is $3.13 for each application. USAID estimates the total burden hours for the pilot program for both acquisition and assistance at 11,000 hours. Based on data from 2009, 2010 and 2011, acquisition accounts for approximately 77% of all awards and assistance accounts for approximately 23% of all awards. USAID therefore estimates the assistance portion of the total burden hours for the partner vetting pilot program at 2,530 hours. The estimate for the annual cost of implementing partner vetting for assistance is $31,676 (15 minutes * 10,120 burden hours * $12.50 per hour). We estimate that the government's cost to process assistance applications for the partner vetting pilot program is $391,810 annually. This estimate is based on labor costs for four GS–13 positions ($147,680 annually for each position) in the USAID Office of Security (SEC), five GS–13 vetting officials ($147,680 annually for each position), and five foreign service nationals ($74,880 annually for each position). USAID estimates that these positions will expend approximately 23% of their total annual hours on the assistance portion of the partner vetting pilot program. One of the goals of the partner vetting pilot program is to further understand the actual costs of implementing partner vetting in various environments. While the figures above reflect USAID's best estimates of government costs to implement the pilot program for assistance, the actual figures may be different. The pilot program will be used to inform our estimates of the costs of partner vetting in various environments.

We estimate that the total cost for this proposed rule for implementing the partner vetting pilot program is $399,716.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), USAID has considered the economic impact of the rule on applicants and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The proposed regulations would add the requirement for partner vetting of key individuals for applicants of USAID-funded assistance awards into the existing partner vetting system. USAID estimates that completing an assistance application in response to a Request For Application takes 200 hours. USAID considers the additional 15 minute burden on applicants as *de minimis* and that this does not significantly increase the burden on grant applicants.

Paperwork Reduction Act

The changes to 22 CFR Part 226 use information collected via USAID Partner Information Form, USAID Form 500–13, which was approved in accordance with 44 U.S.C. 3501 by the Office of Management and Budget on July 25, 2012 (OMB Control Number 0412–0577).

If this information collection is not conducted, then USAID will be unable to use all available means to adequately screen applicants for federal funding

assistance and risks inadvertently giving support to an individual or entity associated with terrorism. As for frequency, the information will be collected at the time of application for USAID assistance funds and will only be collected again if the grant is a multi-year award, in which case it will be collected annually; if the key officials within the NGO change, in which case it will be re-collected as soon as possible after the change; or if other unique circumstances warrant.

During the initial pilot program, it is estimated that approximately, 44,000 NGOs will apply for USAID funds for programs implemented in the five PVS pilot countries and will require vetting. Each NGO will submit one vetting form per grant application and the duration of each USAID grant is typically one year. Thus, the total annual responses are also estimated to be 44,000. The projected time per response for this information collection is a total of one-quarter hour per response. The total annual hours are 11,000. These numbers were calculated based on the fact that NGOs already are providing the majority of information used for screening. The calculations take into account the additional information required. Completing a grant application in response to a Request For Application takes many hours. The additional 15 minute burden on applicants is clearly de minimis and does not significantly increase the burden on grant applicants.

List of Subjects in 22 CFR Part 226

Foreign Aid, Non-profit Organizations.

Regulatory Text

For the reasons set forth in the preamble, the U. S. Agency for International Development proposes to amend 22 CFR part 226 as follows:

PART 226 [AMENDED]

■ 1. The authority citation for 22 CFR Part 226 continues to read as follows:

Authority: 22 U.S.C. 2381(a) and 2401.

Source: 60 FR 3744, Jan. 19, 1995, unless otherwise noted.

■ 2. Amend § 226.2 by adding the following definitions:

§ 226.2 Definitions

* * * * *

Key individual means the principal officer of the organization's governing body (for example, chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees); the principal officer and deputy principal officer of the organization (for example, executive director, deputy director, president, vice president); the program manager or chief of party for the USG-financed program; and any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as identified in the solicitation or resulting cooperative agreement. Key personnel, whether or not they are employees of the prime recipient, must be vetted.

* * * * *

Key personnel means those individuals identified for approval as part of substantial involvement in a cooperative agreement whose positions are essential to the successful implementation of an award.

* * * * *

Vetting official means the USAID employee identified in the application or award as having responsibility for receiving vetting information, responding to questions about information to be included on the Partner Information Form, coordinating with the USAID Office of Security (SEC), and conveying the vetting determination to each applicant, potential subrecipients and vendors subject to vetting, and the agreement officer. The vetting official is not part of the office making the award selection and has no involvement in the selection process.

* * * * *

■ 3. Add § 226.92 to subpart F, to read as follows:

§ 226.92 Partner Vetting.

(a) It is USAID policy that USAID may determine that a particular award is subject to vetting in the interest of national security. In that case, USAID may require vetting of the key individuals of applicants, including key personnel, whether or not they are employees of the applicant, first tier subrecipients, vendors, and any other class of subawards and procurements as identified in the assistance solicitation and resulting award. When USAID conducts partner vetting, it will not award to any applicant who does not pass vetting.

(b) When USAID determines an award to be subject to vetting, the agreement officer determines the appropriate stage of the award cycle to require applicants to submit the completed USAID Partner Information Form, USAID Form 500–13, to the vetting official identified in the assistance solicitation. The agreement officer must specify in the assistance solicitation the stage at which the applicants will be required to submit the USAID Partner Information Form, USAID Form 500–13.

(c) Selection of the successful applicant proceeds separately from vetting. The agreement officer makes the selection determination separately from the vetting process and without knowledge of vetting-related information other than that the apparently successful applicant has passed or not passed vetting.

(d) For those awards the agency has determined are subject to vetting, the agreement officer may only award to an applicant that has passed vetting.

(e) For those awards the agency has determined are subject to vetting, the recipient must submit the completed USAID Partner Information Form any time it changes:

(1) Key individuals, and

(2) Subrecipients and vendors for which vetting is required.

(f) USAID may vet key individuals of the recipient, subrecipients and vendors periodically during program implementation using the information already submitted on the Form.

(g) When the prime recipient is subject to vetting, vetting may be required for key individuals of subawards under the prime award when prior approval in accordance with 22 CFR 226.25(c)(8) for the subaward, transfer or contracting out of any work.

(h) When the prime recipient is subject to vetting, vetting may be required for key individuals of vendors of certain services. The agreement officer must identify these services in the assistance solicitation and any resulting award.

(i) When vetting of subawards is required, the agreement officer must not approve the subaward, transfer, or contracting out, or the procurement of certain classes of items until the organization subject to vetting has passed vetting. When vetting of vendors is required, the recipient may not procure the identified services until the vendor has passed vetting.

(j) The recipient may instruct prospective subrecipients or vendors who are subject to vetting to submit the USAID Partner Information Form to the vetting official as soon as the recipient submits the USAID Partner Information Form for its key individuals.

(k) Pre-award provision and award term.

(1) The agreement officer must insert the pre-award provision Partner Vetting Pre-Award Requirements in Appendix B of this part in all assistance solicitations USAID identifies as subject to vetting.

(2) The agreement officer must insert the award term Partner Vetting in Appendix B in all assistance solicitations and awards USAID identifies as subject to vetting.

■ 4. Add Appendix B to Part 226, to read as follows:

Appendix B to Part 226—Partner Vetting Pre-Award Solicitation Provision and Award Term

Partner Vetting Pre-Award Requirements

(a) USAID has determined that any award resulting from this assistance solicitation is subject to vetting. An applicant that has not passed vetting is ineligible for award.

(b) The following are the vetting procedures for this solicitation:

(1) Prospective applicants review the attached USAID Partner Information Form, USAID Form 500–13, and submit any questions about the USAID Partner Information Form or these procedures to the agreement officer by the deadline in the solicitation.

(2) The agreement officer notifies the applicant when to submit the USAID Partner Information Form. For this solicitation, USAID will vet [*insert in the provision the applicable stage of the selection process at which the Agreement Officer will notify the applicant(s) who must be vetted*]. Within the timeframe set by the agreement officer in the notification, the applicant must complete and submit the USAID Partner Information Form to the vetting official. The designated vetting official is:

Vetting official:

Address:

Email:

(for inquiries only).

(3) The applicants must notify proposed subrecipients and vendors of this requirement when the subrecipients or vendors are subject to vetting.

Note: Applicants who submit using non-secure methods of transmission do so at their own risk.

(c) Selection proceeds separately from vetting. Vetting is conducted independently from any discussions the agreement officer may have with an applicant. The applicant and any proposed subrecipient or vendor subject to vetting must not provide vetting information to other than the vetting official. The applicant and any proposed subrecipient or vendor subject to vetting will communicate only with the vetting official regarding their vetting submission(s) and not with any other USAID or USG personnel, including the agreement officer or the agreement officer's representatives. The agreement officer designates the vetting official as the only individual authorized to clarify the applicant's and proposed subrecipient's and vendor's vetting information.

(d)(1) The vetting official notifies the applicant that it:

(i) Has passed vetting,

(ii) Has not passed vetting, or

(iii) Must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specified in the notification.

(2) The vetting official will include information that the USAID determines releasable. USAID will determine what information may be released consistent with applicable law and Executive Orders, and with the concurrence of relevant agencies.

(e) *Reconsideration.* (1) Within 7 calendar days after the date of the vetting official's notification, an applicant that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the applicant's additional information merits a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(f) *Revisions to vetting information.* (1) Applicants who change key individuals, whether the applicant has previously passed vetting or not, must submit a revised USAID Partner Information Form to the vetting official. This includes changes to key personnel resulting from revisions to the technical portion of the application.

(2) The vetting official will follow the vetting process of this provision for any revision of the applicant's Form.

(g) *Award.* At the time of award, the agreement officer will confirm with the vetting official that the apparently successful applicant has passed vetting. The agreement officer may award only to an apparently successful applicant that has passed vetting.

Partner Vetting

(a) The recipient must comply with the vetting requirements for key individuals under this award.

(b) Definitions. As used in this provision—"key individual," "key personnel" and "vetting official" have the meaning contained in 22 CFR 226.2.

(c) The Recipient must submit a USAID Partner Information Form, USAID Form 500–13, to the vetting official identified below when the Recipient replaces key individuals with individuals who have not been previously vetting for this award. Note: USAID will not approve any key personnel who have not passed vetting. The designated vetting official is:

Vetting official:

Address:

Email:

(for inquiries only).

(d)(1) The vetting official will notify the Recipient that it—

(i) Has passed vetting.

(ii) Has not passed vetting, or

(iii) Must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specifies.

(2) The vetting official will include information that USAID determines releasable. USAID will determine what information may be released consistent with applicable law and Executive Orders, and with the concurrence of relevant agencies.

(e) The inability to pass vetting as described in the this award term may be determined to be a material failure to comply with the terms and conditions of the award and may subject the recipient to suspension or termination as specified in 22 CFR 226.61.

(f) *Reconsideration.* (1) Within 7 calendar days after the date of the vetting official's notification, the recipient or prospective subrecipient or vendor that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the recipient's additional information merits a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(g) A notification that the Recipient has passed vetting does not constitute any other approval under this award.

Alternate I. When subrecipients will be subject to vetting, add the following paragraphs to the basic award term:

(h) When the prime recipient anticipates that it will require prior approval for a subaward in accordance with 22 CFR 226.25(c)(8), the subaward is subject to vetting. The prospective subrecipient must submit a USAID Partner Information Form, USAID Form 500–13, to the vetting official identified in paragraph (c) of this provision. The agreement officer must not approve a subaward to any organization that has not passed vetting when required.

(i) The recipient agrees to incorporate the substance of paragraphs (a) through (i) of this award term in all first tier subawards under this award.

Alternate II. When specific classes of services are subject to vetting, add the following paragraph:

(j) Prospective vendors at any tier providing the following classes of services

must pass vetting. Recipients must not procure these services until they receive confirmation from the vetting official that the prospective vendor has passed vetting. (End of award term)

* * * * *

Angelique M. Crumbly,

Agency Regulatory Official, U.S. Agency for International Development.

[FR Doc. 2013–20846 Filed 8–28–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 627

[FHWA Docket No. FHWA–2013–0039]

RIN 2125–AF64

Value Engineering

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of Proposed Rule Making (NPRM); request for comments.

SUMMARY: The FHWA proposes to update the existing value engineering (VE) regulations to make the regulations consistent with the statutory changes in the Moving Ahead for Progress in the 21st Century Act (MAP–21) and to make other non-substantive changes for clarity.

DATES: Comments must be received on or before October 28, 2013. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by docket number FHWA–2013–0039, by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number FHWA–2013–0039 on your comments. All comments received will be posted, without change, to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Leuderalbert, Value Engineering and Utilities Program Manager, FHWA Office of Program Administration, Federal Highway Administration, 575 North Pennsylvania Street, Indianapolis, IN 46204, (317) 226–5351, or via email at *ken.leuderalbert@dot.gov*, or Mr. Michael Harkins, FHWA Office of the Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4928, or via email at *michael.harkins@dot.gov*. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov*. The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys/*.

Background

The FHWA proposes to update the existing regulations governing the conduct of VE analyses in the planning and development of highway improvement projects to ensure consistency and compatibility with recent changes to the underlying statutory authority at section 106(e) of title 23, United States Code (U.S.C.). On July 6, 2012, MAP–21 (Pub. L. 112–141) was signed into law. Section 1503(a)(3) of MAP–21 amended 23 U.S.C. 106(e) by increasing the project monetary thresholds triggering the need for a VE analysis, specifying that a VE analysis is not required for projects delivered using the design-build method of construction, and defining the requirements for a State Transportation Agency (STA) to establish and sustain a VE Program under which VE analyses are conducted on all applicable projects.

In late 1995, Congress passed the National Highway System Designation Act which directed the Secretary to establish a program that required States to carry out a VE analysis for all Federal-aid highway projects on the National Highway System (NHS) with an estimated total cost of $25 million or more. On February 14, 1997, FHWA established its VE regulations in 23 CFR part 627, formally establishing the FHWA VE program along with the requirement that STAs create and sustain a VE program. Section 1904 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59), required that a VE analysis be conducted for bridge projects with an estimated total cost of $20 million or more and any other projects determined by the Secretary of Transportation to be appropriate.

Section 1503(a)(3) of MAP–21 modified the requirements and raised the thresholds for when a VE analysis is required to $50,000,000 or more for projects on the NHS using Federal-aid Highway Program Funding (FAHP) assistance, and $40,000,000 or more for bridge projects on the NHS receiving Federal assistance. Section 1503(a)(5) removed the requirement to conduct a VE analysis for projects delivered using the design-build method of construction. In addition, MAP–21 defined the requirements for an STA to establish and sustain a VE Program under which VE analyses are conducted on all applicable projects, consistent with the current regulations pertaining to STA VE programs (as specified in 23 CFR 627.9).

In Fiscal Year 2011, STAs performed VE analyses on 378 Federal-aid highway projects and approved and implemented a total of 1,224 VE recommendations, resulting in a construction cost savings of $1.006 billion. In addition, a savings of $38.33 million was realized as the result of approved construction VE change proposals (VECP) that were submitted by contractors and accepted by STAs.

The STA VE programs, the VE analyses conducted on applicable projects, and VECPs have resulted in annual cost savings of $1.7 billion on average from 2002 through 2011. Additional information on STA, local authority, and FHWA VE programs and practices is available at: *http://www.fhwa.dot.gov/ve*. In light of these savings, the FHWA notes that Congress has provided the Secretary with authority to require STAs to conduct VE analyses on other projects where the Secretary determines that it is appropriate to do so. As such, the FHWA may exercise this discretion on a project-by-project basis for projects that do not fall within the statutory thresholds where the FHWA determines that there is a clear potential for significant savings that outweighs the administrative burden associated with conducting the VE analysis.

Section by Section Discussion of the Proposed Changes to 23 CFR 627

The FHWA proposes to revise 23 CFR part 627—Value Engineering as follows:

Section 627.1—Purpose and Applicability

Paragraph (b) would be amended to clarify that the policies and procedures of a State DOT's VE program shall include the requirement to implement approved VE analysis recommendations when a VE analysis is conducted.

Section 627.3—Definitions

The definition of final design would be amended to read as follows: "*Final design.* Any design activities following preliminary design and expressly includes the preparation of final construction plans and detailed specifications for the performance of construction work." The definition of total project costs would be revised to clarify that the total estimated cost of a project includes all of the work that is conducted. The definition of VE Job Plan would be revised to state that the VE Job Plan "may" be scaled to meet the needs of the project rather than that it "should" be scaled.

Section 627.5—Applicable Projects

Paragraph (b)(1) would be amended to specify that a VE analysis is required for each project on the NHS with an estimated total project cost of $50 million or more that utilizes Federal-aid highway funding instead of the previous threshold of $25 million.

Paragraph (b)(2) would be amended to specify that a VE analysis is required for each bridge project on the NHS with an estimated total project cost of $40 million or more that utilizes Federal-aid highway funding instead of the previous threshold of $20 million. Paragraph (b)(2) would also be amended to remove the VE analysis requirement for bridges off the NHS.

Paragraph (e) would be amended to clarify that a VE analysis is no longer required for projects delivered using the design-build method of construction. However, STAs and local public agencies are still encouraged to conduct VE analyses for such projects.

Paragraph (f) would be amended to clarify that a VE analysis is required for projects delivered using the Construction Manager/General Contractor (CM/GC) method of contracting that meet the monetary thresholds defined in 23 CFR 627.5(b).

Section 627.9—Conducting a VE Analysis

Paragraph (c) would be amended to clarify that when a STA or local authority chooses to conduct a VE analysis on a design-build project, the VE analysis must be performed prior to the release of the Request for Proposal (RFP).

Paragraph (d) would be amended to add a section clarifying that a VE analysis is not required to be completed prior to the release of the RFP for CM/GC contracts. However, the VE analysis would need to be completed, and approved recommendations would need to be incorporated into the project plans, prior to requesting a construction price proposal from the CM/GC contractor.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the DOT will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule is not a significant regulatory action within the meaning of Executive Order 12866 and is not a significant rulemaking within the meaning of the DOT regulatory policies and procedures.

The changes that this rule proposes are requirements mandated by MAP–21 and are intended to clarify and revise the requirements for conducting a VE analysis. Additionally, this action complies with the principles of Executive Order 13563. After evaluating the costs and benefits of these proposed amendments, the FHWA anticipates that the economic impact of this rulemaking will be minimal. These changes are not anticipated to adversely affect any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities, such as local governments and businesses. Based on this evaluation, the FHWA anticipated this action would not have a significant economic impact on a substantial number of small entities. The proposed amendment clarifies and revises the requirements for conducting a VE analysis on applicable projects using Federal-aid highway funding. After evaluating the cost of these proposed amendments, as required by changes in authorizing legislation, the FHWA believes the impacts upon small entities that use FAHP funding on projects would be negligible. Therefore, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $143.1 million or more in any one year (2 U.S.C. 1532). Furthermore, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector. Additionally, the definition of "Federal Mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this proposed rule directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The FHWA invites public comment about our intention to request the Office

of Management and Budget approval for a new information collection, which is summarized in the Background section of this document. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Collection Title: Value Engineering Analyses on Federal-aid Highway Projects.

Type of Request: New information collection requirement.

Respondents: 50 States, the District of Columbia, and Puerto Rico.

Frequency: One collection every year.

Estimated Average Burden per Response: Nationwide on average there are approximately 400 VE analyses that are conducted annually. It will take approximately 30 minutes to compile the results of each VE analysis that is conducted. It will also take approximately 3 hours to compile the results of all of the VE analyses that are conducted annually in each State DOT, the District of Columbia, and Puerto Rico and to submit these results to FHWA.

Estimated Total Annual Burden Hours: Approximately 356 hours per year. When submitting comments for this proposed information collection, use the FHWA Docket ID Number FHWA– 2013–0039. You may use by any of the following methods:

Web site: For access to the document 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: Document Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

National Environmental Policy Act

The FHWA has analyzed this rule for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined it will not have any effect on the quality of the human and natural environment, because this rule merely establishes the requirements to conduct a VE analyses whenever an applicable Federal-aid highway project is to be design and constructed. Therefore, this action is categorically excluded in 23 CFR 771.117(c)(20).

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this rule would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. This proposed rulemaking revises the existing requirements to conduct a VE analyses whenever an applicable Federal-aid highway project is to be designed and constructed. As such, this proposed rule would not impose any direct compliance requirements on Indian Tribal governments nor would it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this proposed action would not be a significant energy action under that order because any action contemplated would not be likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule and has determined that this proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, and certifies that this proposed action would not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 627

Grant programs—transportation, Highways and roads.

Issued On: August 12, 2013.

Victor M. Mendez,

FHWA Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 627 as follows:

Title 23

PART 627—VALUE ENGINEERING

■ 1. The authority citation for part 627 continues to read as follows:

Authority: 23 U.S.C. 106(e), 106(g), 106(h), 112(a) and (b), 302, 315; and 49 CFR part 18.

§ 627.1 [Amended]

■ 2. In § 627.1, amend paragraph (b) by removing the words "identifying when a VE analysis is required" and adding in its place the words "under which VE analyses are identified, conducted and approved VE recommendations implemented on applicable projects (as defined in 627.5 of this part)".

■ 3. Amend § 627.3 by:

■ a. Revising the definitions "Final Design" and "Total Project Costs," and

■ b. Amending the definition of "Value Engineering VE Job Plan" by removing the word "should" and adding in its place the word "may".

The revisions read as follows:

§ 627.3 Definitions.

* * * * *

Final Design. Any design activities following preliminary design and expressly includes the preparation of final construction plans and detailed specifications for the performance of construction work.

* * * * *

Total Project Costs. The estimated costs of all work to be conducted on a project including the environment, design, right-of-way, utilities and construction phases.

* * * * *

■ 4. Amend § 627.5 by:

■ a. Amend paragraph (a) by adding the words "prior to authorizing the project for construction (as specified in 23 CFR 630.205)" at the end of the sentence.

■ b. Revise paragraphs (b) introductory text, (b)(1), (2) and (3),

■ c. Amend paragraph (b)(4) by removing the words "for which" and adding in its place "where", and by adding the word "construction" between the words "the letting".

■ d. Amend paragraph (b)(5) by removing the words "Federal-aid" and "the" and adding the words "that utilizes Federal-aid highway program funding" to the end of the sentence.

■ e. Revise paragraph (c).

■ f. Amend paragraph (d) by removing the words "any additional VE analysis" and adding in its place "additional VE analyses" and by adding the words "where there is a high potential for the project to benefit from a VE analysis" at the end of the sentence.

■ g. Revise paragraph (e) to read.

■ h. Add paragraph (f).

The revisions and additions read as follows:

§ 627.5 Applicable projects.

* * * * *

(b) Applicable projects requiring a VE analysis shall include the following:

(1) Each project located on the National Highway System (NHS) (as specified in 23 U.S.C. 103) with an estimated total project cost of $50 million or more that utilizes Federal-aid highway funding;

(2) Each bridge project located on the NHS with an estimated total project cost of $40 million or more that utilizes Federal-aid highway funding;

(3) Any major project (as defined in 23 U.S.C. 106(h)), located on or off of the NHS, that utilizes Federal-aid highway funding in any contract or phase comprising the major project;

* * * * *

(c) An additional VE analysis is not required if, after conducting a VE analysis required under this part, the project is subsequently split into smaller projects in the design phase or the project is programmed to be completed by the letting of multiple construction projects. However, the STA may not avoid the requirement to conduct a VE analysis on an applicable project by splitting the project into smaller projects, or multiple design or construction projects.

* * * * *

(e) A VE analysis is not required for projects delivered using the design build method of construction. While not required, FHWA encourages STAs and local public authorities to conduct a VE analysis on design build projects that meet the requirements identified in subsection (b) of this section.

* * * * *

(f) A VE analysis is required on projects delivered using the Construction Manager/General Contractor (CM/GC) method of contracting, if the project meets the requirements identified in subsection (b) of this section.

* * * * *

§ 627.7 [Amended]

■ 5. Amend § 627.7 by:

■ a. Amending paragraph (a) by removing the phrase "conducted for all applicable projects" and inserting the phrase "identified, conducted and approved VE recommendations implemented on all applicable projects (as defined in 627.5 of this part)".

■ b. Amending paragraph (b) by adding the words "prior to the project being authorized for construction (as specified in 23 CFR 630.205)." to the end of the sentence.

■ 6. Amend § 627.9 by:

■ a. Revising paragraph (c).

■ b. Redesignating paragraphs (d), (e), (f), (g) and (h) as paragraphs (e), (f), (g), (h) and (i) respectively.

■ c. Adding a new paragraph (d) to read as follows:

The revisions and additions read as follows:

§ 627.9 Conducting a VE analysis.

* * * * *

(c) When a STA or local public agency chooses to conduct a VE analysis for a project utilizing the design-build project delivery method the VE analysis must be performed prior to the release of the final Request for Proposals or other applicable solicitation documents.

* * * * *

(d) For projects delivered using the CM/GC contracting method, a VE analysis is not required prior to the preparation and release of the RFP for the CM/GC contract.

The VE analysis is required to be completed and approved recommendations incorporated into the project plans prior to requesting a construction price proposal from the CM/GC contractor.

[FR Doc. 2013–20315 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 12

[NPS–WASO–REGS–13553; PXXVPAD0515]

RIN 1024–AE01

National Cemeteries, Demonstration, Special Event

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service is proposing to revise the definition of the terms *demonstration* and *special event,* applicable to the national cemeteries administered by the National Park Service.

DATES: Comments must be received by October 28, 2013.

ADDRESSES: You may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AE01, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail to: A.J. North, Regulations Program, National Park Service, 1849 C Street NW., MS–2355, Washington, DC 20240.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information, see the Public Participation 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.*

FOR FURTHER INFORMATION CONTACT: A.J. North, National Park Service Regulations Program, by telephone: 202–513–7742 or email: *waso_regulations@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) is responsible for protecting and managing

fourteen national cemeteries, which are administered as integral parts of larger NPS historical units. A list of the national cemeteries managed by the NPS may be viewed at *http://www.cem.va.gov/cem/cems/doi.asp.*

The national cemeteries administered by the NPS were established as national shrines in tribute to the gallant dead who have served in the Armed Forces of the United States. These cemeteries are to be protected, managed, and administered as suitable and dignified burial grounds and as significant cultural resources. In 1986, the NPS comprehensively revised the Part 12 rules that govern the NPS administered national cemeteries to comply with Federal statutory law and to update and standardize procedures for the operation of national cemeteries (51 FR 8976, March 14, 1986). As part of this revision, § 12.2 was amended to prohibit "conducting special events and demonstrations, except for official commemorative events on Memorial Day, Veterans Day, and other dates designated by the superintendent as having special historic and commemorative significance for the particular national cemetery." As more extensively detailed at 51 FR 8977 (March 14, 1986), this is because these national cemeteries are intended to have a protected atmosphere of peace, calm, tranquility, and reverence where there is "a substantial governmental interest that exists in maintaining this protected atmosphere where individuals can quietly contemplate and reflect upon the significance of the contributions made to the nation by those interred."

The term *demonstration* was added to § 12.3 and defined to mean "a demonstration, picketing, speechmaking, marching, holding a vigil or religious service or any other like form of conduct that involves the communication or expression of views or grievances, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers."

The term *special event* was also added and defined as "a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival or similar activity that is not a demonstration, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers."

Concerns Over the Definition of the Term "Demonstration"

In *Boardley* v. *Department of the Interior*, 605 F.Supp. 2d 8 (D.D.C. 2009), the United States District Court for the District of Columbia noted that the NPS's definition of the term *demonstration* in 36 CFR 2.51(a) and 7.96(g)(1)(i) could pose a problem on the scope of the agency's discretion, insofar as it could be construed to allow NPS officials to restrict speech based on their determination that a person intended to draw a crowd with their conduct. The NPS had not applied, nor intended to apply, its regulations in an impermissible manner. Nevertheless, to address the District Court's concerns in *Boardley*, the NPS narrowed the definition of *demonstration* in an interim general rule governing demonstration and the sale and distribution of printed matter for most of the National Park System (75 FR 64148, Oct. 19, 2010). This rule was amended and finalized on June 24, 2013 (78 FR 37713). In response to *Boardley*, the NPS also issued a final rule that narrowed the NPS's National Capital Region definition of *demonstration* at § 7.96 (78 FR 14673, March 7, 2013).

The new definition of *demonstration* in 36 CFR 2.51 and 7.96 provided a "reasonably likely" standard—rather than an "effect, intent or propensity" standard—to ensure the necessary objectivity in the regulatory process, while negating the possibility of a permit being granted or rejected on impermissible grounds. The NPS also determined that the "reasonably likely" standard is easily and consistently understood.

Proposed Rule

The national cemeteries administered by the NPS have been set aside as resting places for members of the fighting forces of the United States. Many activities and events that may be appropriate in other park areas are inappropriate in a national cemetery because of its protected atmosphere of peace, calm, tranquility, and reverence. The NPS continues to maintain its substantial interest in maintaining this protected atmosphere in its national cemeteries, where individuals can quietly visit, contemplate, and reflect upon the significance of the contributions made to the nation by those who have been interred there.

The NPS also desires to maintain consistency in the regulations governing demonstrations and special events in park units, including national cemeteries. Accordingly, the proposed amended definition of the term *demonstration* in § 12.3 would mirror the language now used 36 CFR 2.51 and 7.96. The proposed amended definition of the term *special event* in § 12.3 would also contain nearly identical language. To avoid the possibility of a decision based on impermissible grounds, the proposed rule would revise the § 12.3 definitions of *demonstration* and *special event* by eliminating the terms "intent, effect, or likelihood" and replacing them with the term "reasonably likely to draw a crowd or onlookers." While these proposed revisions would not substantively alter the § 12.4 prohibition of special events and demonstrations within national cemeteries, it would more clearly and consistently define these terms.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 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. Executive Order 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)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

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.

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. It addresses public use of national park 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).

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas. 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 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget 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 we have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. 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 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 in not required.

Clarity of This Rule

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)) 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 you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information: The primary author of this regulation was C. Rose Wilkinson, National Park Service, Regulations and Special Park Uses, Washington, DC.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section. All comments must be received by midnight of the close of the comment period. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 12

Cemeteries, Military personnel, National parks, Reporting and recordkeeping requirements, Veterans.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 12 as follows:

PART 12—NATIONAL CEMETERIES

■ 1. The authority citation for Part 12 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, and 462(k); E.O. 6166, 6228, and 8428.

■ 2. Revise the part heading as set forth above.

■ 3. Amend § 12.3 by revising definitions of "Demonstration" and "Special event" to read as follows:

§ 12.3 Definitions.

* * * * *

Demonstration means a demonstration, picketing, speechmaking, marching, holding a vigil or religious service, or any other like form of conduct that involves the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to attract a crowd or onlookers. This term does not include

casual park use by persons that is not reasonably likely to attract a crowd or onlookers.

* * * * *

Special event means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival, or similar activity that is not a demonstration, engaged in by one or more persons, the conduct of which is reasonably likely to attract a crowd or onlookers. This term does not include casual park use by persons that is not reasonably likely to attract a crowd or onlookers.

* * * * *

Dated: August 6, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–21060 Filed 8–28–13; 8:45 am]

BILLING CODE 4312–EJ–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2013–0482; FRL 9900–40–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri; St. Louis Area Transportation Conformity Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri on March 17, 2011. This revision proposes to amend the rule to provide more specificity to the interagency consultation process requirements and responsibilities. The revision to Missouri's rule does not add any additional requirements to the existing rule but merely adds language that better clarifies specific roles and responsibilities including the consultation groups' processes. Further, these revisions do not have an adverse affect on air quality. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments on this proposed action must be received in writing by September 30, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0482, by mail to: Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steven Brown at (913) 551–7718, or by email at *brown.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: August 1, 2013.

Mark Hague,

Acting Regional Administrator, Region 7.

[FR Doc. 2013–20915 Filed 8–28–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2013–0095]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a rulemaking petition submitted by BMW Group, BMW of North America, LLC, to amend the Federal motor vehicle safety standard on occupant crash protection to permit optional certification using a seat belt interlock for front seat occupants as an alternative to the unbelted crash test requirements. The agency is denying the petition because the supporting material provided by the petitioner is not sufficient for the agency to fully evaluate the safety need, benefits, effectiveness, and acceptability of seat belt interlock systems. Furthermore, in 2012, the agency initiated the development of a research program on seat belt interlocks in light of its newly-acquired statutory authority to allow consideration of seat belt interlocks as a compliance option. The agency believes that making a determination to amend its performance standards prior to the completion of its research is premature.

FOR FURTHER INFORMATION CONTACT: *For Non-Legal Issues:* Ms. Carla Rush, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone: (202) 366–4583, Facsimile: (202) 493–2739.

For Legal Issues: Mr. William Shakely, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone: (202) 366–2992, Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA's mission is to save lives, prevent injuries, and reduce economic losses resulting from motor vehicle crashes. Increasing seat belt use is one of the agency's highest priorities for carrying out this mission. For each percentage point gain in national seat belt usage, we estimate that 200 lives are saved each year. In 2012, the nationwide seat belt use reached a high of 86 percent for drivers and front seat passengers. To achieve this rate, we have relied on an array of agency initiatives, such as regulating and promoting the use of in-vehicle technologies, the Click It or Ticket program [1] and State primary enforcement laws, to encourage seat belt usage. Notwithstanding impressive gains in seat belt usage, data from the 2011 Fatality Analysis Reporting System (FARS) indicates that 52 percent of all

[1] *http://www.nhtsa.gov/ciot.*

passenger vehicle crash fatalities were unbelted occupants.

A. History and Research of Seat Belt Interlock Systems

From a historical perspective, the agency's goal of increasing seat belt usage extends back nearly to the agency's inception. In 1972, as an interim measure to increase seat belt use until acceptable automatic systems became available, the agency added a compliance option for passenger vehicles manufactured between August 15, 1973 and August 14, 1975, that allowed the use of an interlock system that prevented the engine from starting if any front-seat occupant was not buckled up (37 FR 3911). However, as a result of consumer non-acceptance of these interlock systems, Congress adopted a new provision, as part of the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93–492, 88 Stat. 1470 (Oct. 27, 1974)). It prohibited NHTSA from requiring, or permitting as a compliance option [2] a safety belt interlock designed to prevent starting or operating a motor vehicle if an occupant is not using a seat belt or a buzzer designed to indicate a seat belt is not in use, except a buzzer that operates only during the 8-second period after the ignition is turned to the "start" or "on" position (49 U.S.C. 30124).

In 1975, NHTSA funded a research study on seat belt interlock systems in production vehicles.[3] The study intended to measure the effectiveness of the interlock system in increasing seat belt usage. Three separate analyses were conducted. Two involved seat belt use observations among rental car customers from U.S. airports and interviews of a subsample of non-users. The third was a field study of observed seat belt use and a follow-up telephone interview among private car owners in the general population.

The field study found that occupants of model year (MY) 1973 vehicles showed a 3–6 percent seat belt use rate, while those of MY 1974 vehicles showed a significantly higher seat belt use rate of 41–64 percent.[4] However, the study also found a decline in the seat belt use rate among occupants of the MY 1974 vehicles as the year went on (e.g., in February seat belt usage was 64 percent among drivers and front right passengers and by November it dropped to 41 percent). This decline in seat belt use within the observed year was attributed to mechanical issues with the system as well as drivers learning how to defeat or circumvent the system. Telephone interviews of the vehicle owners found that 59 percent considered the seat belt interlocks to be "unfavorable." The proportion of vehicle owners that were categorized as non-users that considered the interlock systems "unfavorable" was 87 percent. Furthermore, only 54 percent of the vehicle owners interviewed reported that they had not defeated or circumvented the interlock system.

In 2001, NHTSA funded a study (through a contract with the Transportation Research Board of the National Academy of Sciences (NAS)) of the potential benefits of technologies designed to increase seat belt use.[5] This study aimed to determine how drivers (at that time) might accept technologies designed to increase seat belt use. As part of this study, NHTSA conducted in-depth interviews and focus groups to obtain a greater understanding of the perceived effectiveness and acceptability of four technologies: two seat belt reminder systems and two interlock systems (entertainment and transmission).[6] The NAS committee reviewed the available literature, held stakeholder meetings with key automobile manufacturers and suppliers, and reviewed the results of the in-depth interviews and focus groups conducted by NHTSA for this study.[7]

Among the NAS study findings, transmission interlock systems were perceived to be highly effective based upon the interviews and focus groups conducted. More than 85 percent of respondents rated them effective. However, only 43 percent rated them acceptable with the hard-core non-users [8] making up the highest percentage (71 percent) of respondents who rated the transmission interlock not acceptable. The recommendations from the study suggested that NHTSA and the private sector encourage the research and development of seat belt interlock systems for certain high-risk groups (e.g., drivers impaired by alcohol, teenage drivers) who are overrepresented in crashes. It also suggested that interlocks could be installed on company fleets. Other recommendations issued by the NAS report involved seat belt reminders and other strategies.

In 2009, NHTSA published a report on a field study that evaluated a device that prevented drivers from shifting vehicles into gear for up to 8 seconds unless the seat belt was buckled.[9] This study showed that a gearshift delay resulted in a significant 20 percentage-point increase among two samples of commercial fleet drivers. This study also noted that future research could investigate a complete transmission seat belt interlock now that seat belt use is much higher than in the 1970s and that transmission interlocks may receive higher acceptance than ignition interlocks.

Given the history of interlocks, and the statutory prohibition against requiring or allowing seat belt interlocks as a compliance option, manufacturers have primarily focused their efforts on developing and introducing technologies that encourage seat belt use, but that are acceptable to customers, such as seat belt reminder systems. Such systems can be effective without being overly annoying.

In 2012, President Obama signed into law Public Law 112–141, the Moving Ahead for Progress in the 21st Century Act (MAP–21). MAP–21, a transportation reauthorization bill, removed the restriction from permitting the use of seat belt interlocks as a compliance option. However, the prohibition on requiring a seat belt interlock still remains.

In 2013, the Insurance Institute for Highway Safety (IIHS) published its findings from a national telephone survey it conducted on the attitudes toward seat belt use and in-vehicle technologies for encouraging seat belt use. The respondents were asked about their support of different types of seat belt interlocks: a speed interlock, a transmission interlock, an entertainment system interlock, and an ignition interlock. The survey found that only about half of the full-time seat belt users

[2] We note that the statutory prohibition restricting the use of interlocks as an option for compliance with NHTSA standards in no way limited the manufacturer's freedom to place interlocks in vehicles. See NHTSA's 2004 interpretation letter to Mr. Bruce H. Carraway, Jr., Carraway Safety Belt Company at *http://isearch.nhtsa.gov/files/a00473beltminder_cmc.html.*

[3] A. Westefeld and B. M. Phillips. Safety Belt Interlock System: Usage Survey. National Highway Traffic Safety Administration, U.S. Department of Transportation, May 1975. DOT HS 801 594.

[4] Most MY 1974 vehicles were equipped with seat belt interlock systems.

[5] "Buckling Up, Technologies to Increase Seat Belt Use," Special Report 278, Committee for the Safety Belt Technology Study, *http://www.TRB.org,* 2003.

[6] An entertainment interlock prevents playing the radio or stereo unless seat belts are buckled. A transmission interlock prevents putting the vehicle in gear unless seat belts are buckled.

[7] Bentley, J.J., Kurrus, R., & Beuse, N. "Qualitative research regarding attitudes towards four technologies aimed at increasing safety belt use." (Report 2003–01) Bethesda, MD: Equals Three Communications. DOT HS 043 581.

[8] Hard-core non-users are those who report never or rarely using seat belts.

[9] Pilot Tests of a Seat Belt Gearshift Delay on the Belt Use of Commercial Fleet (DOT HS 811 230)—Dec. 2009.

supported the use of seat belt interlocks to encourage seat belt use and even fewer part-time seat belt users and non-users supported their use.[10]

B. Unbelted Test Requirements

Initially, the injury criteria limits in Federal Motor Vehicle Safety Standard (FMVSS) No. 208 had to be met for air bag equipped vehicles in frontal rigid barrier crash tests at speeds up to 48 km/h (30 mph), with the 50th percentile adult male dummies wearing seat belts, and in separate barrier crashes at those speeds with dummies being protected by automatic (passive) means (35 FR 16927). However, due in part to litigation, the passive protection requirements did not begin until the MY 1987 for passenger cars and MY 1995 for light trucks and vans. The barrier test was performed with the dummies unbelted if the means of passive protection was an air bag.[11] In 1997, the agency amended FMVSS No. 208 to provide a temporary option for manufacturers to certify their vehicles to an unbelted sled test as an alternative to the unbelted barrier test requirement (62 FR 12960). NHTSA established the sled test option to address the air bag fatalities that were occurring at the time, and to ensure that the vehicle manufacturers could quickly depower all air bags so that they inflate less aggressively. As part of the May 2000 final rule that required advanced air bags, the sled test option was removed and vehicle manufacturers were required to meet a rigid barrier crash test with both unbelted 5th percentile adult female dummies and 50th percentile adult male dummies in a 20 mph to 25 mph rigid barrier crash test (65 FR 30680).

II. Petition

On October 23, 2012, BMW Group, BMW of North America, LLC, (herein referred to as the petitioner) submitted a petition to NHTSA to amend FMVSS No. 208, "Occupant crash protection," to permit a certification option using a seat belt interlock for front seat occupants as an alternative to the existing unbelted crash test.[12]

The petitioner cited several arguments in support of their request, including the potential benefits associated with the increased use of seat belts as well as the opportunity to design optimized systems for belted occupants. The petitioner estimated that hundreds of lives could be saved if FMVSS No. 208 was modified as requested and it suggested that the number of lives that could be saved by increasing seat belt use would be significant compared to other agency rulemakings (e.g., roof crush, ejection mitigation, tire pressure monitoring systems, etc.). With regard to optimizing for belted occupants, the petitioner noted that it was gathering additional simulation/user acceptability data to share with the agency, as confidential business information. However, the agency has not received that data to date.

By allowing vehicles to be optimized for belted occupants, the petitioner claimed that vehicles will be lighter and more spacious, as well as more fuel efficient with lower emissions. The petitioner estimated that a 7 pound vehicle weight reduction (by removing knee bolsters) would result in carbon dioxide (CO_2) savings between 274–406 metric tons per year and 30,850–45,744 gallons of fuel saved per year.

The petitioner stated that by making interlocks a compliance option, there would not be any cost burden associated with this amendment and it would result in savings of Federal and State funds (e.g., expenses for emergency medical services (EMS), hospital stays, insurance, traffic, etc.). It also claimed that Federal funding for seat belt initiatives could be used to fund other programs since seat belt interlocks have the potential of increasing belt usage at no extra cost to the government.

The petitioner identified three potential types of interlock systems: An ignition interlock, a transmission interlock, and a speed-limiting interlock. The petitioner noted that an ignition interlock would likely have low customer acceptance, based on past reactions, and have other disadvantages (e.g., does not allow remote starting, encourages defeat mechanisms, etc.). The petitioner stated that a transmission interlock has the benefits of an ignition interlock, but allows the driver to warm up the vehicle or simply sit in the vehicle with the heat or air conditioning running. The petitioner believed that a speed-limiting interlock, that allows the vehicle to drive at low speeds (ideal for short distance tasks, such as driving to a mail box, towing situations, etc.), would be the least annoying and most accepted type of interlock.

The petitioner further expressed its preference for a speed-limiting interlock system that focuses on front occupants only. It stated that monitoring rear seat belt usage would be problematic because occupant detection in the rear would prevent consumers from carrying cargo on the rear seats, which would likely result in consumer backlash.[13]

III. Analysis of Petition

The agency is denying the petitioner's request to allow a seat belt interlock compliance option as an alternative to unbelted crash test requirements of FMVSS No. 208. Removing the protection offered to unbelted occupants would be unprecedented for NHTSA considering unbelted crash test requirements date back to the 1970s (35 FR 16927).[14] To do so without a sufficient scientific basis could lead to unintended consequences and potentially negative outcomes. Given the complex issues surrounding seat belt interlocks, the agency believes that it would be desirable to have additional information beyond that provided by the petitioner before deciding whether to pursue the requested rulemaking action. The agency would like to evaluate the safety case for rulemaking on this issue objectively and with a reasonable degree of certainty. However, the agency does not have sufficient information, at this time, to perform such an evaluation.

Although there may be potential benefits of a seat belt interlock system as a means of increasing seat belt use, as suggested by the petitioner, the agency does not believe this is sufficient justification, without additional information, for the requested rulemaking. There are many other important considerations that we would like addressed before deciding whether to pursue rulemaking. Among such considerations would be user acceptability and potential disbenefits. The following discussion provides further analysis of the justification provided by the petitioner as well as other key factors that the agency would want to consider before deciding whether to pursue rulemaking.

[10] D.G. Kidd, et al. "Attitudes toward seat belt use and in-vehicle technologies for encouraging belt use." Insurance Institute for Highway Safety, January 2013. *http://www.iihs.org/research/topics/pdf/r1183.pdf.*

[11] On September 2, 1993, NHTSA amended FMVSS No. 208 to require the installation of air bags as the means of providing automatic crash protection (58 FR 46551). The full compliance date for the amended requirements was September 1, 1997, for passenger cars and September 1, 1998, for light trucks and vans.

[12] The petitioner noted that it had initiated the action with the Congress to amend the Motor Vehicle Safety Act to give the agency the authority to allow a seat belt interlock as a compliance option.

[13] Occupant detection systems that rely on weight sensors would have problems distinguishing occupants from cargo, which could be a source of annoyance for drivers if cargo is triggering the interlock system and not an unbuckled occupant.

[14] Due to many years of litigation, the passive protection requirements did not begin until MY 1987 for passenger cars and MY 1995 for light trucks and vans.

The petitioner's main arguments for permitting the use of seat belt interlock systems as a compliance option are that it would increase seat belt use rates among front seat occupants and allow manufacturers to optimize their vehicle interior and safety restraint designs for belted occupants. It also mentioned the added benefit of allowing manufacturers the design freedom to create innovative lightweight vehicle concepts.

The agency agrees with the theoretical premise that a seat belt interlock system could have the potential to increase seat belt use rates. This is consistent with our past research. However, the degree to which seat belt use will increase is not clear and is likely dependent on multiple factors. Since interlocks have not been present in the vehicle fleet since the 1970s, it is difficult to make an accurate assessment of their effectiveness and acceptance at this time. We cannot assume the effects will be the same as they were in the past. Given today's 86 percent seat belt use rate, if interlocks were re-introduced into the vehicle fleet, we would not experience an eight-fold increase in seat belt use that the 1975 study on the interlock systems reported.

Furthermore, the petitioner failed to address the acceptance of interlock systems, given their historical background. The IIHS's recent survey suggested that the acceptance among part-time and non-users of these systems has not improved over the years. This lack of acceptance among the types of occupants that an interlock is intended to target leads to the reasonable assumption that such occupants may attempt to disable the interlocks. This is supported by the research findings and the real world historical evidence of consumer backlash in the 1970s, which resulted in motorists finding ways to disconnect or circumvent their interlock system. The petitioner does not address how such a system would be hardened to prevent it from being disabled or circumvented, nor the expected actual effectiveness of the systems based on the level of hardening.

Before deciding whether to pursue rulemaking, NHTSA would want such information in order to evaluate the technologies available to limit the possibility that seat belt interlock systems could be circumvented or disabled and to evaluate potential test procedures to determine that a vehicle certified by this option could not be circumvented or disabled and the costs and expected effectiveness of added technologies to ensure that. The petitioner did not provide specifics of how any of the three types of systems it described would be hardened to prevent circumvention or any means by which the agency could ensure the system could not be defeated.

Another concern with an interlock system that is not universally effective (i.e., results in some remainder of occupants unbelted) is the potential risk of harm to those unbelted occupants. By allowing manufacturers to opt out of complying with the unbelted frontal crash test requirements, it potentially puts unbelted occupants at an increased risk of harm. Before deciding whether to pursue rulemaking, the agency would want to determine and quantify the potential disbenefit to those remaining unbelted occupants in comparison to the protection they are now offered. The petition lacked an analysis of this issue.

The petitioner instead opined that the current unbelted test requirements may result in a reduction of protection to belted front seat occupants. It claimed that belted occupant protection can be optimized if the unbelted tests were removed; however, no data were submitted to substantiate this claim. The agency is further unaware of any increased risk of injury to belted front occupants as a result of vehicle optimization being done to meet both the unbelted and belted crash protection requirements. Without detailed information on the design changes the petitioner envisions that vehicle manufacturers will make in order to offer better protection to belted front occupants in the absence of an unbelted test requirement and the associated quantified benefits, the agency is unable to assess the validity of the petitioner's claim.

The petitioner also suggested that by permitting the use of a seat belt interlock system as a compliance option, manufacturers could optimize their vehicles to be "lighter, more spacious and fuel efficient." The petitioner stated that manufacturers are known to modify the vehicle interior designs and oversize the restraint systems in order to meet the unbelted frontal occupant crash protection criteria. It estimated that by granting its petition, a 7 pound vehicle weight reduction (by removing knee bolsters) would result in CO_2 and fuel savings.

We presume that by suggesting the removal of a restraint system component, such as the knee bolster, the implication is that if there were no unbelted test, the knee bolster could be removed. However, it is unclear to the agency how removal of the knee bolster helps optimize the protection offered to belted occupants, as the petitioner suggested. It is also important to understand the extent of the safety reduction, if removal of components like knee bolsters degrades the protection of those occupants that might remain unbelted.

The agency acknowledges that equipment added to vehicles to comply with safety standards may increase vehicle weight, and therefore have a secondary, but generally very small, effect on vehicle fuel economy, and, in some cases, decreased passenger compartment space. However, when considering a petition to exempt a manufacturer from complying with an occupant safety standard, the agency's first consideration would be the effects of the proposed exemption on occupant safety. Furthermore, the petitioner's requested amendments will not necessarily lead to fuel economy gains that could be attributed to this rulemaking action since there is no accompanying requirement on the part of the vehicle manufacturer to achieve these fuel economy benefits.

The petitioner stated that by making interlocks a compliance option there would be no resulting cost burden. It also claimed there would be savings to society associated with reduction in expenses for such things as EMS, hospitals, insurance, and traffic. It also claimed that Federal funding for seat belt initiatives could be used elsewhere. The agency has not traditionally estimated the cost burden to industry for compliance options because the agency's focus is on whether the various options will result in similar benefits. To the extent cost burden would be considered, it is only one of many factors the agency must consider in allowing an option. As we expressed above, the petition is lacking other important information that the agency would want in order to determine the merits of the petitioner's request.

As to the petitioner's claims of societal cost savings, we note that the costs related to emergency medical services, hospital stays and insurance would all be captured in our assessment of injury reduction related to any increase in seat belt use. As to any cost saving related to traffic reduction, we do not expect that an interlock would prevent a crash from occurring, thus the assumption of a cost saving related to this factor is speculative. Finally, as to the claimed potential savings related to funding of seat belt use initiatives, we note the following observations. First, even if a seat belt interlock compliance option were allowed, it would only affect new vehicles and there would be many legacy vehicles in the fleet without interlocks. Second, since it would be a compliance option, the extent to which this option will be

selected is unknown, again potentially leaving vehicles in the fleet without interlocks. Thus, we predict that seat belt use initiatives would need to remain in place for the foreseeable future.

Finally, we wish to make clear that the denial of this petition does not restrict the petitioner, or any other manufacturer, from voluntarily providing a seat belt interlock system in their vehicles.[15] In fact, such a voluntary implementation would likely yield important real world data about interlock systems that could be utilized by the agency in the future.

IV. NHTSA Planned Seat Belt Interlock Systems Research

The agency is in the process of developing a research program on seat belt interlock systems in an effort to understand the potential for improving occupant safety in light of the agency's newly acquired statutory authority to permit interlocks as a compliance option. The human factors research program will gather data to help determine the effectiveness and acceptance of seat belt interlock systems as well as discuss potential minimum performance specifications for seat belt interlock systems and their advantages/disadvantages (including those needed to prevent defeating the system).[16] The agency anticipates participation by organizations leading the development of seat belt interlock system prototypes (i.e., vehicle manufacturers and suppliers) in these research efforts. To assess the potential impacts on unbelted occupants, the agency initially plans on using occupant restraint simulation models to understand the safety implications for optimizing occupant compartments and restraint systems considering today's regulatory requirements versus those that apply to belted occupants only. We plan to complete these research studies in 2015.

V. Conclusion

After carefully considering all aspects of the petition, the agency has decided to deny the petitioner's request to allow a seat belt interlock compliance option as an alternative to the unbelted crash test requirements of FMVSS No. 208. Given the complex issues surrounding seat belt interlocks, the agency believes that it would be desirable to have additional information, beyond the supporting material provided by the petitioner, before deciding whether to pursue the requested rulemaking action. The agency lacks field data or sufficient research findings that would allow for the determination of the optimal type of seat belt interlock system as it relates to acceptance and the attributes necessary to harden against circumvention. Nor do we have information to assess the potential level of safety for belted and unbelted occupants that would result from such a rulemaking.

The agency's effort to study seat belt interlock systems is in its initial stages. Making a determination to include seat belt interlocks as an alternative compliance option to the unbelted test requirements of FMVSS No. 208 prior to completion of our research is premature.

In accordance with 49 CFR Part 552, this completes the agency's review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

Issued in Washington, DC, on: August 19, 2013 under authority delegated in 49 CFR 1.95.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–21128 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–59–P

[15] However, such a system cannot be considered when assessing compliance with the FMVSS and thus all protection currently required by FMVSS No. 208 to belted and unbelted occupants would remain in force.

[16] This research is contingent upon the availability of seat belt interlock system prototypes.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0042; 4500030114]

RIN 1018–AX13

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Jaguar

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our August 20, 2012, proposed designation of critical habitat for the jaguar (*Panthera onca*), as revised on July 1, 2013, under the Endangered Species Act of 1973, as amended. This notice announces reopening of the comment period to allow all interested parties an additional opportunity to comment and submit information on the revised proposed rule, the draft economic analysis, and the draft environmental assessment. We will consider all comments and information provided by the public during this comment period in preparation of a final designation of critical habitat. Accordingly, the final designation may differ from our proposal. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: The comment period for the proposed rule published August 20, 2012 (77 FR 50214), and revised July 1, 2013 (78 FR 39237) is reopened. We will consider comments received or postmarked on or before September 13, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule, the revisions of July 1, 2013, the draft economic analysis, and the draft environmental assessment on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042 or by mail from the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments by searching for FWS–R2–ES–2012–0042, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0042; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; by telephone (602–242–0210); or by facsimile (602–242–2513). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 2012, we published a proposed rule to designate critical habitat for the jaguar (77 FR 50214). That proposal had a 60-day comment period, ending October 19, 2012. On July 1, 2013, we published a revised proposal that incorporated new information received since the August 20, 2012, proposal (78 FR 39237). That revised proposal had a comment period that ended August 9, 2013. In the July 1, 2013, revised proposed rule, we proposed to designate approximately 858,137 acres (ac) (347,277 hectares (ha)) as critical habitat in six units located in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico. In the July 1, 2013, revised proposed rule, we also noticed the availability of a draft economic analysis and draft environmental assessment for public comment. We received requests for a public hearing, and a public hearing was held in Sierra Vista, Arizona, on July 30, 2013. We are now reopening a comment period on the August 20, 2012, proposed rule, as revised on July 1, 2013. Finally, pursuant to a court-approved settlement agreement, the Service agreed to deliver the final designation of critical habitat to the **Federal Register** no later than December 16, 2013.

Information Requested

We will accept written comments and information during this reopened comment period on our July 1, 2013, revised proposed rule to designate critical habitat for the jaguar (78 FR 39237), draft economic analysis, and draft environmental assessment. For more information on the specific information we are seeking, please see the July 1, 2013, revised proposed rule. You may submit your comments and materials concerning the proposed rules by one of the methods listed in **ADDRESSES.**

If you submitted comments or information on the proposed rule (77 FR 50214; August 20, 2012) during the initial comment period from August 20, 2012, to October 19, 2012; or the revised proposed rule (78 FR 39237; July 1, 2013) during the second comment period from July 1, 2013, to August 9, 2013, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final rule. Further, any comments and information received after the closing of the second comment period on August 9, 2013, will be incorporated into the record during this comment period and will be fully considered. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during all three comment periods. On the basis of public comments and other relevant information, we may, during the development of our final determination on the proposed critical habitat designation, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the revised proposed rule, draft economic analysis, or draft environmental assessment by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the revised proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the original proposed rule, the revisions published on July 1, 2013, the draft economic analysis, and the draft environmental assessment on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2012–0042, or by mail from the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Fish and Wildlife Office, Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 21, 2013.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–21168 Filed 8–28–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 130708594–3594–01]

RIN 0648–XC751

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To Delist the North Pacific Population of the Humpback Whale and Notice of Status Review

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

ACTION: 90-day petition finding, request for information, and initiation of status review.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to identify the North Pacific population of the humpback whale (*Megaptera novaeangliae*) as a Distinct Population Segment (DPS) and delist the DPS under the Endangered Species Act (ESA). The humpback whale was listed as an endangered species in 1970 under the Endangered Species and Conservation Act of 1969, which was later superseded by the Endangered Species Act of 1973, as amended (ESA). We find that the petition viewed in the context of information readily available in our files presents substantial scientific and commercial information indicating that the petitioned action may be warranted.

We are hereby initiating a status review of the North Pacific population of the humpback whale to determine whether the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to this population from any interested party.

DATES: Scientific and commercial information pertinent to the petitioned action must be received by October 28, 2013.

ADDRESSES: You may submit information or data, identified by

"NOAA–NMFS–2013–0106," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic information via the Federal eRulemaking Portal *http://www.regulations.gov*. To submit information via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter "NOAA–NMFS–2013–0106" in the keyword search. Locate the document you wish to provide information on from the resulting list and click on the "Submit a Comment" icon to the right of that line.
- *Mail or Hand-Delivery:* Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All information received is a part of the public record and may be posted to *http://www.regulations.gov* without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept information from anonymous sources. Attachments to electronic submissions will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Marta Nammack, NMFS, Office of Protected Resources, (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2013, we received a petition from the Hawai'i Fishermen's Alliance for Conservation and Tradition, Inc., to identify the North Pacific population of the humpback whale as a DPS and to delist it under the ESA. Copies of the petition are available upon request (see **ADDRESSES**, above).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable, within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce is required to make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted, as is the case here, we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 12 months of receipt of the petition, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a comprehensive review of all best available information, as compared to the narrow scope of review at the 90-day stage, which focuses on information set forth in the petition, this 90-day finding does not prejudge the outcome of the status review.

Under the ESA, the term "species" means a species, a subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). A joint policy issued by NMFS and the U.S. Fish and Wildlife Service (the Services) clarifies the Services' interpretation of the phrase "Distinct Population Segment," or DPS (61 FR 4722; February 7, 1996). The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: Discreteness of the population segment in relation to the remainder of the species; and, if discrete, the significance of the population segment to the species.

A species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(d), a species shall be removed from the list if the Secretary of Commerce determines, based on the best scientific and commercial data available after conducting a review of the species' status, that the species is no longer threatened or endangered because of one or a combination of the section 4(a)(1) factors. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) Extinction. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) Recovery. The principal goal of the Services is to return listed species to a point at which protection under the ESA is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) Original data for classification in error. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(b)) define "substantial information," in the context of reviewing a petition to list, delist, or reclassify a species, as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Judicial decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action may be warranted. As a general matter, these decisions hold that a petition need not establish a strong likelihood or a high probability that the petitioned

action is warranted to support a positive 90-day finding.

To make a 90-day finding on a petition to list, delist, or reclassify a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates that the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be disregarded at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for delisting is not required to make a positive 90-day finding.

In evaluating whether a petition to delist a population is warranted, first we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for delisting under the ESA. If so, we then evaluate whether the information indicates that the species no longer faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Distribution and Life History of the North Pacific Population of the Humpback Whale

The following description of the distribution and life history of the North Pacific population of the humpback whale is from Fleming and Jackson (2011), Global Summary of the Humpback Whale, information that was recently compiled for NMFS' 5-year review of the humpback whale and published as a NOAA Technical Memorandum. Humpback whales are large, globally distributed, baleen whales with long pectoral flippers, distinct ventral fluke patterning, dark dorsal coloration, a highly varied acoustic call (termed song) and a diverse repertoire of surface behavior (Fleming and Jackson, 2011). The mating system for humpback whales is generally thought to be male-dominance polygyny, also described as a 'floating lek' (Clapham, 1996). In this system, multiple males compete for individual females and exhibit competitive behavior. Humpback song is a long, complex vocalization (Payne and McVay, 1971) produced by males on the winter breeding grounds, and also, less commonly, on migration (Cato, 1991; Clapham and Mattila, 1990) and seasonally on feeding grounds (Clark and Clapham, 2004). Behavioral studies suggest that song is used to advertise for females, and/or to establish dominance among males (Darling and Bérubé, 2001; Darling *et al.*, 2006; Tyack, 1981).

In the Northern Hemisphere, sexual maturity has been estimated at 5–11 years of age and appears to vary both within and among populations (Clapham, 1992; Gabriele *et al.*, 2007b; Robbins, 2007). Gestation is 11–12 months, and calves are born in sub-tropical waters (Matthews, 1937). In the Northern Hemisphere, humpback whales exhibit maternal fidelity to specific feeding regions (Baker *et al.*, 1990; Martin *et al.*, 1984). The sex ratio of adults is roughly 1:1 males:females. The average generation time for humpback whales (the average age of all reproductively active females at carrying capacity) has been estimated at 21.5 years, based on a compilation of some of the life history parameters reviewed above (Taylor *et al.*, 2007). Estimated annual rates of population increase range from 0–4 percent to 12.5 percent for different times and areas throughout the range and in the Northern Hemisphere (Baker *et al.*, 1992; Barlow and Clapham, 1997; Clapham *et al.*, 2003a; Steiger and Calambokidis, 2000); however, it is generally accepted that any rate above 11.8 percent per year is biologically impossible for this species (Zerbini *et al.*, 2010). Annual adult mortality rates between 0.049 and 0.037 have been estimated for the Gulf of Maine and the North Pacific Hawaiian Islands populations (Barlow and Clapham, 1997; Mizroch *et al.*, 2004). Using associations of calves with identified mothers (newborn calves are not uniquely identifiable) on North Pacific breeding and feeding grounds, Gabriele (2001) estimated 6-month mortality to be 0.182 (95-percent confidence intervals (CI) 0.023–0.518).

In the Northern Hemisphere, humpback whales summer in the biologically productive northern higher latitudes and most individuals travel south to sub-tropical and tropical waters in winter to mate and calve. Migratory routes and behavior are likely to be maternally directed (Baker *et al.*, 1990; Martin *et al.*, 1984). Feeding areas are often near or over the continental shelf and associated with cooler temperatures and oceanographic or topographic features that serve to aggregate prey. Feeding areas in the North Pacific Ocean range widely in latitude from California north into the Bering Sea. There are at least four known breeding areas in the North Pacific Ocean (with different subareas) including the western Pacific Ocean and waters off the Hawaiian Islands, Mexico, and Central America.

Humpback whales take in large mouthfuls of prey during feeding rather than continuously filtering food, as may be observed in some other large baleen whales (Ingebrigtsen, 1929). Humpback whales have a diverse diet that appears to vary slightly across feeding aggregation areas. The species is known to feed on both small schooling fish and on euphausiids (krill). Feeding behavior is varied as well and frequently features novel capture methods involving the creation of bubble structures to trap and corral fish; bubble nets, clouds and curtains are often observed when humpback whales are feeding on schooling fish (Hain *et al.*, 1982). Lobtailing and repeated underwater looping movements have also been observed or recorded during surface feeding events, and it may be that certain feeding behavior is spread through the population by cultural transmission (Friedlaender *et al.*, 2009; Weinrich *et al.*, 1992).

Analysis of Petition and Information Readily Available in NMFS Files

The petition contains information, much of it from Fleming and Jackson (2011), on the humpback whale, including its biology and ecology, geographic range and migratory

patterns, feeding ecology, reproduction, and genetics, including supporting information. The petitioner asserts that the North Pacific population of the humpback whale qualifies as a DPS under our DPS Policy and that it should be delisted if the best scientific and commercial information available substantiate that it is neither endangered nor threatened and protection under the ESA is no longer required. The petitioner notes that in determining whether a species should be delisted NMFS considers: (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; or (5) other natural or manmade factors affecting its continued existence. The petitioner also asserts that the interim goal set forth in NMFS' Final Recovery Plan for the Humpback Whale (NMFS, 1991) has been met and that the long-term goal has also likely been met.

Below, we summarize our analysis and conclusions regarding the relevant information presented by the petitioner and in our files.

Does the information in the petition and in our files support identification of the North Pacific population as a DPS?

To support the assertion that the North Pacific population of the humpback whale should be identified as a DPS, the petitioner provides information indicating that the population is discrete from other humpback whale populations and significant to the global species.

The petitioner states that the population is discrete from other humpback whale populations because it is spatially separated, genetically distinct, and morphologically different from other populations. The petitioner notes that humpback whales in the northern and southern hemispheres of the Pacific Ocean are separated spatially based on their seasonal migratory patterns. In the North Pacific Ocean, humpback whales feed in higher latitudes during the boreal summer and breed in lower latitudes north of the equator during the boreal winter. In the South Pacific, humpback whales feed in the Antarctic during the austral summer (boreal winter) and breed in lower latitudes south of the equator during the austral winter (boreal summer). Individual humpback whales in the Southern Hemisphere differ from those in the two Northern Hemisphere oceans in the timing and location of reproduction. Differing estimates of testis weight from the breeding and feeding grounds (and no spermatozoa detected on feeding grounds (Symons and Weston, 1958)) indicate that there is seasonal variation in sperm production (Chittleborough, 1965; Omura, 1953), further supporting the asynchrony of seasonal mating between the Northern and Southern Hemisphere populations. Finally, ovulation is also seasonal (Chittleborough, 1957), suggesting that if individual whales travel between the hemispheres outside their usual estrus period, this seasonality may prohibit successful reproduction.

The petitioner also notes that significant differences among the three principal oceanic populations in the North Pacific, North Atlantic, and Southern Oceans have been shown through mitochondrial DNA (mtDNA) and microsatellite analyses, suggesting that gene flow between oceans is minimal and migration between oceanic populations is limited to no more than a few females per generation (Baker *et al.*, 1993, 1994; Valsechi *et al.*, 1997). Of the 22 mtDNA haplotypes found in the world-wide survey of 230 individuals, only three were found in more than one ocean (Baker *et al.*, 1994), and of these three, only one was found to be common to the North Pacific and Southern Oceans. No haplotype was common to all three oceanic populations.

The petitioner asserts that, morphologically, individual humpback whales in the Southern Hemisphere differ from those in the two Northern Hemisphere oceans in the patterning and extent of ventral fluke and lateral pigmentation (Rosenbaum *et al.*, 1995). There are significantly more dark-colored flukes in the North Pacific populations of humpback whales, and significantly more light-colored flukes in the Southern Ocean populations (Rosenbaum *et al.*, 1995).

The petitioner asserts that the North Pacific population of the humpback whale is significant to the taxon to which it belongs because: (1) There would be a significant gap in the species' range if the North Pacific population were lost, as there are no other breeding populations in the northern hemisphere of the Pacific Ocean that migrate to higher latitudes of the North Pacific; and (2) the North Pacific population of the humpback whale has unique genetic traits. Migration between North Pacific, Southern Ocean, and North Atlantic populations of humpback whales is considered to be approximately one female per generation (Baker *et al.*, 1994), making timely repopulation from the southern hemisphere unlikely if the North Pacific population were extirpated from its range. The petition suggests that the genetic uniqueness of the North Pacific population further increases the importance of the population, as complete extirpation of the North Pacific population would eliminate those genetic traits and lineages from the worldwide population of humpback whales. The information presented by the petitioner is also in our files, with Fleming and Jackson (2011) providing some of the most updated information. The petition presents substantial information indicating that the North Pacific population of the humpback whale may qualify as a DPS.

Does the information in the petition and in our files support the assertion that none of the ESA Section 4(a)(1) factors are contributing to the extinction risk of the North Pacific population of Humpback Whale?

We must determine whether a species is an endangered species or a threatened species on the basis of any of the following 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; or (5) other natural or manmade factors affecting its continued existence. Here we evaluate the information provided in the petition and in our files with regard to these factors to determine whether it would lead a reasonable person to conclude that none of these factors are contributing to the extinction risk of the North Pacific population of humpback whale.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The petitioner states that we identified chemical pollution (including oil spills) and coastal development as two primary threats to humpback whale habitat in our 1991 recovery plan and notes that a recent assessment of humpback whales worldwide (Fleming and Jackson, 2011) identified pollution as a threat but did not identify coastal development as a threat. The petitioner notes that humpback whale populations throughout the Pacific Ocean have more than doubled since the recovery plan was completed, during which time coastal development has continued in both breeding and feeding habitats. According to Fleming and Jackson (2011), the highest levels of DDT were found in whales feeding off southern California, a highly urbanized region of

the coast with substantial discharges (Elfes et al., 2010). The health effects of different doses of contaminants are currently unknown for humpback whales (Krahn *et al.*, 2004). There is evidence of detrimental health effects from these compounds in other mammals, namely disease susceptibility, neurotoxicity, reproductive and immune system impairment (Reijnders, 1986; DeSwart *et al.*, 1996; Eriksson *et al.*, 1998). Contaminant levels have been suggested as a causative factor in lower reproductive rates found among humpback whales off southern California (Steiger and Calambokidis, 2000), but at present the threshold level for negative effects and transfer rates to calves are unknown for humpback whales. For humpback young of the year biopsy-sampled in the Gulf of St. Lawrence, Metcalfe *et al.* (2004) found PCB levels similar to that of their mothers and other adult females, indicating that bioaccumulation can be rapid and that transplacental and lactational partitioning did little to reduce contaminant loads. According to the petition, however, the health effects of different contaminants are currently unknown for humpback whales (Fleming and Jackson, 2011), and Elfes (2010) suggests the levels found in humpback whales are unlikely to have a significant impact on their persistence as a population (Fleming and Jackson, 2011).

The petition also notes that very little is known about the effects of oil or petroleum on cetaceans and especially on mysticetes (Fleming and Jackson, 2011), but that the Exxon Valdez oil spill of 1989 did not significantly impact humpback whales in Prince William Sound (Dahlheim and Von Ziegesar, 1993). The petitioner adds that naturally occurring toxin poisoning can be the cause of whale stranding events and is particularly implicated when unusual mortality events occur, but that the threat is negligible to North Pacific humpback whales because the several documented cases of these events have all occurred on the U.S. East Coast. As noted in Fleming and Jackson (2011), however, but not in the petition, regional-level stranding networks and sampling protocols in Oceania and the United States, Canada, Bahamas, and Australia can provide the means for monitoring trends in humpback whale mortality events and their causes, but there is still a great need for better diagnostic testing of marine mammal tissue samples from these stranding events to determine the cause of death (Gulland, 2006).

Finally, the petitioner notes that while several possible impacts from global climate change have been suggested, including impacts to abundance and distribution of prey (Fleming and Jackson, 2011), there are no known adverse effects to humpback whales.

On the basis of this information, the petitioner concludes that the North Pacific humpback whale population does not appear to be faced with any threatened destruction, modification, or curtailment of its habitat or range. We find that the petition presents substantial information indicating that the North Pacific humpback whale population may not be at risk from destruction, modification, or curtailment of its habitat or range.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner asserts that the North Pacific humpback whale population is not subject to commercial harvest. It acknowledges that tissue from 17 different humpback whales has been detected in Japanese market whale products (1993–2009) through genetic monitoring surveys, but states that these takes are likely to have negligible impact on the population.

The petitioner notes that although whale watching operations have been documented on many humpback whale feeding grounds, breeding grounds, and migratory corridors (O'Connor *et al.*, 2009), Weinrich and Corbelli (2009) concluded that calving rate and calf survival at age two were not negatively affected by whale watching activities. Senigaglia *et al.* (2012) concluded that the most common response of humpback whales to whale watch boats is increased swimming speed and that little evidence exists that whale watching activities have significant effects on interbreath intervals and blow rates. The petitioner adds that efforts to manage whale watching operations include limiting the number of whale watching vessels, limiting vessel approach distances to whales, specifying the manner of operating around whales, and establishing limits to the period of exposure of the whales. Also, in Hawaii and Alaska, Federal law prohibits approaching humpback whales closer than 100 yards (91.4 m) when on the water or disrupting behavior (50 CFR 224.103). Operating any aircraft within 1,000 feet (305 m) of humpback whales is also prohibited in Hawaii.

On the basis of this information, the petitioner concludes that the North Pacific humpback whale population is not subject to overutilization for commercial or recreational purposes. We find that the petition presents substantial information indicating that the North Pacific humpback whale population may not be at risk from overutilization for commercial, recreational, scientific, or educational purposes.

Disease and Predation

The petitioner states that there is little published information on humpback whale disease, but that the humpback whale does carry a crustacean ectoparasite (the cyamid *Cyamus hoopis*). While the whale is the main source of nutrition for this parasite (Schell *et al.*, 2000), there is little evidence that it contributes to whale mortality (Fleming and Jackson, 2011). The petitioner also asserts that predation of the North Pacific population of the humpback whale by the killer whale (*Orcinus orca*) occurs at or near the wintering grounds, but that it is unlikely to be significantly affecting the humpback whale's recovery; attacks by large sharks and false killer whales (*Pseudorca* crassidens) are rare. The petitioner concludes that disease and predation are not significantly affecting the North Pacific humpback whale's recovery. We find that the petition presents substantial information indicating that disease and predation may not be contributing to the North Pacific humpback whale's extinction risk.

Inadequacy of Regulatory Mechanisms

The petitioner asserts that the humpback whale is protected by local, Federal, and international regulatory mechanisms. It is protected as indigenous wildlife under Hawaii Administrative Rule 13–124, which prohibits the capture, possession, injury, killing, destruction, sale, transport, or export of indigenous wildlife. All marine mammals are protected under the U.S. Marine Mammal Protection Act of 1972 (MMPA), which prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. Because human-caused mortality and serious injury (M&SI) levels for the three North Pacific humpback whale stocks are below Potential Biological Removal (PBR) as calculated under the MMPA (Allen and Angliss, 2012; Caretta *et al.*, 2011), no Take Reduction Team has been convened to date for these stocks to

develop a plan to reduce incidental take to sustainable levels.

The Hawaii breeding population of the North Pacific humpback whale is protected by the Hawaiian Islands Humpback Whale National Marine Sanctuary, and five additional National Marine Sanctuaries are located within the North Pacific humpback whale range: Olympic Coast, Cordell Bank, Gulf of the Farallones, Monterey Bay, and Channel Islands. Additional protection for humpback whales and their habitat is provided by the Papahanaumokuakea Marine National Monument, which encompasses 139,797 square miles (~36.2 hectares) of ocean around the Northwestern Hawaiian Islands.

Internationally, humpback whales are protected under the International Whaling Commission (IWC), established under the International Convention for the Regulation of Whaling of 1946 (ICRW). The IWC prohibited commercial whaling of North Pacific humpback whales in 1966, and an international moratorium on the whaling of all large whale species was established in 1982. Some nations have continued to hunt whales under Article VIII of the ICRW, which allows the killing of whales for scientific research purposes, but no humpback whales are currently declared as a target of scientific research takes. The current moratorium on commercial whaling will remain in place unless a 75-percent majority of IWC signatory members vote to lift it.

We find that the petition presents substantial information indicating that the North Pacific population of the humpback whale may be sufficiently protected by state, Federal, and international regulatory mechanisms.

Other Natural or Man-Made Factors

As the petitioner points out, the NMFS recovery plan for the humpback whale identified several known and potential impacts to humpback whales, including collision with ships, entrapment and entanglement in fishing gear, and acoustic disturbance (NMFS, 1991).

The petitioner notes that collisions with ships have been reported in both feeding and breeding areas of the North Pacific humpback whale range, adding that ship strikes may result in life-threatening trauma or mortality for the whale, though the severity of injuries depends primarily on speed and size of the vessel. According to Fleming and Jackson (2011), humpback whales are the second most commonly reported species involved in vessel strikes after fin whales. Calves and juvenile whales are thought to be more susceptible to vessel collisions (Wiley and Asmutis, 1995). The petitioner provides some information on vessel strike reports and attributes the increased number of ship strike reports in Hawaii and Alaska over the years to the increasing abundance of humpback whale populations and the increase in vessels operating in humpback whale habitat (Lammers *et al.*, 2003). According to the petitioner, a large percentage of ship strikes in Hawaii and Alaska are non-fatal and primarily occur with pleasure crafts and commercial whale watching vessels (Douglas *et al.*, 2008). The petitioner notes that the most recent stock assessment reports for the three North Pacific humpback whale stocks report a small number of ship strikes. For the California/Oregon/Washington stock, the average number of documented humpback whale deaths by ship strikes for 2004–2008 was 0.4 animals per year, with a PBR of 11.3 (Caretta *et al.*, 2011) and for the Central North Pacific stock, the average number of M&SI from ship strikes for 2003–2007 was estimated at 1.6 animals per year, with a PBR of 61.2 (Allen and Angliss, 2012). However, the petitioner acknowledges that no estimate of ship strike mortality is reported for the Western North Pacific stock. The petitioner concludes that the available data on ship strikes in the North Pacific show that vessel strikes are not affecting the continued existence of humpback whales. The petition presents substantial information indicating that vessel strikes may not be affecting the continued existence of humpback whales in the North Pacific.

Entanglement in fishing gear and other marine debris is a documented source of injury and mortality to cetaceans. Since 2002, the Hawaiian Islands Large Whale Entanglement Response Network has confirmed 112 reports of entangled large whales as true entanglement of large whales, with all but three reports involving humpback whales (Lyman, 2012). The petitioner notes that these reports have increased over time, corresponding to the increasing wintering population in Hawaiian waters. Though not noted in the petition, NMFS' Alaska Region received over 170 reports of humpback whale entanglement (both confirmed and unconfirmed) in Alaska from 1990–2011. According to the petitioner, the average number of humpback whales resulting in M&SI from commercial fisheries is 3.2 animals for the California/Oregon/Washington stock (Caretta *et al.*, 2011) and 3.8 animals for the Central Pacific stock (Allen and Angliss, 2012), and these interaction rates are below the stocks' calculated PBRs, suggesting that fishery interactions do not affect the continued existence of these stocks. Again, limited information is available on entanglement and fishery interactions in the western Pacific (Allen and Angliss, 2012). We find that the petition presents substantial information indicating that fishery interactions may not be affecting the continued existence of these stocks.

Acoustic disturbance is another threat to cetaceans, especially anthropogenic low-frequency sound produced by shipping, oil and gas development, defense related activities, and research activities. The petitioner asserts that available evidence suggests that anthropogenic noise does not threaten the continued existence of North Pacific humpback whales, pointing out that only one record is known in which two humpback whales were stranded with extensive damage to the temporal bones from a large-scale explosion (Fleming and Jackson, 2011). Impact of low-frequency noise on variation of humpback whale songs appears to be minimal, though studies have shown that song length increased in response to low-frequency broadcasts (Miller *et al.*, 2000; Fristrup *et al.*, 2003).

The petitioner concludes that the steady increase in the humpback whale population throughout the North Pacific indicates that these threats have not cumulatively curtailed the recovery and growth of the humpback whale population, and therefore, are not affecting its continued existence. We find that the petition presents substantial information indicating that these factors may not be contributing to the extinction risk of this population.

Petition Finding

Based on the above information and criteria specified in 50 CFR 424.14(b)(2), we find that the petitioners present substantial scientific and commercial information indicating that identifying the North Pacific population of humpback whale as a DPS and delisting this DPS may be warranted. Under section 4(b)(3)(A) of the ESA, an affirmative 90-day finding requires that we promptly commence a status review of the petitioned species (16 U.S.C. 1533 (b)(3)(A)).

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on the humpback whale, with a focus on the North Pacific population, in the following areas: (1) Historical and current population status and trends; (2) historical and current

distribution; (3) migratory movements and behavior; (4) genetic population structure, as compared to other populations; (5) current or planned activities that may adversely impact humpback whales; and (6) ongoing efforts to conserve humpback whales. We request that all information and data be accompanied by supporting documentation such as (1) maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request from the NMFS Office of Protected Resources (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 22, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, Performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–21066 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130426413–3719–01]

RIN 0648–BD24

Atlantic Highly Migratory Species; Vessel Monitoring Systems

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify the declaration requirements for vessels required to use Vessel Monitoring System (VMS) units in Atlantic Highly Migratory Species (HMS) fisheries. This proposed rule would require operators of vessels that have been issued HMS permits and are required to use VMS to use their VMS units to provide hourly position reports 24 hours a day, 7 days a week (24/7). The proposed rule would also allow the operators of such vessels to make declarations out of the fishery when not retaining or fishing for HMS for specified periods of time encompassing two or more trips. These changes would make the current Atlantic HMS VMS requirements consistent with other VMS-monitored Atlantic fisheries and provide additional reporting flexibility for vessel operators by eliminating the requirement to hail-out two hours in advance of leaving port. Additionally, these changes will continue to provide NOAA's Office of Law Enforcement (OLE) with information necessary to facilitate enforcement of HMS regulations. This rule would affect all commercial fishermen who fish for Atlantic HMS who are required to use VMS.

DATES: Submit comments on or before September 30, 2013. We will hold an operator-assisted public hearing via conference call and webinar for this proposed rule on September 23, 2013, from 1 p.m. to 3 p.m., EDT. We will also discuss the proposed rule with the HMS Advisory Panel during the AP meeting the week of September 9, 2013; the details of that meeting were published in a separate **Federal Register** notice on July 23, 2013 (78 FR 44095).

ADDRESSES:

You may submit comments on this document, identified by NOAA–NMFS–2013–0132, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0132*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.
- *Fax:* 301–713–1917, Phone: 301–427–8503; *Attn:* Margo Schulze-Haugen.

Instructions: Please include the identifier NOAA–NMFS–2013–0132 when submitting comments. Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Atlantic Highly Migratory Species Management Division by email to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–7285.

Public Hearing and Webinar Information

The call-in information for the public hearing is phone number 888–997–8509; participant pass code 3166031. We will also provide a brief presentation via webinar. Participants can register for the webinar at *https://www1.gotomeeting.com/register/242124417*. Following the registration process, participants will receive a confirmation email with webinar log-in information. Presentation materials and other supporting information will be posted on the HMS Web site at: *http://www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Cliff Hutt or Karyl Brewster-Geisz by phone at 301–427–8503 or by fax at 301–713–1917.

Copies of this proposed rule and any related documents can be obtained by writing to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910, visiting the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/*, or by contacting Cliff Hutt.

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, management measures must be consistent with ten National Standards, and fisheries must be managed to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce shall promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Maintaining the VMS monitoring program ensures compliance with both

international and domestic requirements while facilitating enforcement of Atlantic HMS fisheries regulations. Requirements to use VMS in the pelagic longline fishery were implemented on June 25, 2003 (68 FR 37772). NMFS issued a rule on December 24, 2003 (68 FR 74746), which required VMS operation for vessels with bottom longline gear onboard between 33°00′ N. latitude and 36°30′ N. latitude to ensure compliance with the mid-Atlantic shark closed area from January 1 through July 31 each year, and also required VMS for fishermen fishing for sharks with gillnet gear operating from November 15 through April 15 each year due to concerns about interactions with right whales. In all of these rules, fishermen were allowed to power down the VMS unit between trips as long as the VMS unit was turned on at least two hours prior to leaving port and remained on until the vessel returned to port. These requirements were specific to vessels both holding an HMS permit and having longline or gillnet gear onboard, regardless of whether a vessel was fishing for HMS on any particular trip.

On December 2, 2011, NMFS published a final rule (76 FR 75492) that required the use of Electronic Mobile Transmitting Unit (EMTU) VMS units for all HMS-permitted fishing vessels that are required to use VMS. The rule required vessel operators to "hail-out" at least two hours prior to departure for each fishing trip and declare the target fishery and gear type being utilized. Additionally, vessel operators are required to "hail-in" and notify NMFS at least three hours before the vessel returns to port.

Following the publication of the 2011 rule, NMFS received feedback from vessel operators regarding the hail-in/hail-out requirements. Some vessel operators reported that the hail-out requirement can be burdensome. For example, fishermen who are using gear that requires little preparatory work prior to departure (e.g., gillnet gear) feel the current VMS requirements are burdensome by requiring them to arrive at port two hours before departure to notify NMFS of their departure. In addition, fishermen who hold HMS permits but do not fish for or target HMS exclusively (for example, some mid-Atlantic gillnet fishermen who make daily trips for monkfish over winter months do not fish for HMS during that time), have stated that requiring them to hail-out every time they leave for a fishing trip, even when those trips are not targeting HMS, is burdensome. Regardless of what is being fished for, those fishermen that have been issued an HMS permit and have pelagic longline, bottom longline, or gillnet gear onboard, are required, under current regulations, to provide hail-outs each trip.

Although the existing hail-in requirement was established to provide NOAA OLE the ability to properly plan and arrange for inspections upon vessel return, current regulations allow fishermen to hail-in at any time as long as that hail-in occurs at least three hours before returning to port (i.e., they could hail-in before they even leave the dock). Allowing vessels the flexibility to hail-in so far in advance of their actual return to port undermines NOAA OLE's ability to know when and where to meet a returning vessel for inspection.

In this proposed rule, NMFS is considering modifications to the requirements for hail-in/hail-out declarations as they apply to HMS permit holders. Specifically, fishermen who will not be fishing for or retaining HMS for two or more fishing trips would be given the option to declare out of the fishery. Once a vessel "declares out," that fisherman would be exempt from the HMS hail-in/hail-out VMS requirements. Under this change, if a fisherman has declared out of the fishery, but incidentally catches any HMS while fishing that they wish to retain, he or she would be required to issue a declaration specifying the target species and fishing gear used while at sea before returning to port with any HMS. The fisherman would also have to hail-in on that trip to report advance notice of landing to NMFS. That fisherman would then need to decide whether to hail-out or declare out of the fishery before leaving for their next trip. It is important to note that declaring out of the fishery exempts fishermen only from the HMS VMS hail-in/hail-out requirements; their VMS units would still be required to be on to provide hourly location signals. All other requirements and restrictions for vessels that have an HMS permit would still apply (e.g., those vessels would not be allowed in relevant closed or gear restricted areas), and other applicable VMS requirements for any other fisheries they are participating in would still apply. Vessels operating under a declaration out of the HMS fishery that wish to begin fishing for and retaining HMS again would need to resume hailing-in and hail-out for each fishing trip. This change in the hail-in/hail-out requirements should reduce reporting burden on fishermen while continuing to provide NOAA OLE with information needed to facilitate enforcement of HMS regulations.

NMFS also considered proposing that fishermen, who target HMS for two or more consecutive trips, and use the same type of fishing gear each trip, be allowed to issue a "declaration into the fishery." As an example, NMFS is aware that there are fishermen who always use pelagic longline gear and always fish for and retain HMS. Allowing such fishermen to "declare into the fishery," would have exempted them from making hail-outs before each trip while still requiring them to hail-in prior to landing HMS. NMFS is not proposing this change at this time because of NOAA OLE concerns that they would not receive information needed to effectively monitor HMS fisheries with advance notice if vessel operators did not hail-out before each trip.

In this rule, NMFS is also proposing that all VMS units be required to remain on to provide hourly position reports 24 hours a day, 7 days a week (24/7), even when in port. This represents a change from the current regulations, which allow fishermen to turn their VMS unit off while the vessel is in port and require they turn the VMS unit back on at least two hours before leaving port. The proposed change to this requirement would provide vessel operators with additional flexibility since they would no longer be required to hail-out at least two hours before leaving port, but could instead wait to hail-out when leaving port. This change would also improve consistency of HMS fisheries VMS regulations with other Federal fishery VMS regulations while still providing NOAA OLE with location data to facilitate enforcement. Consistent with existing regulatory requirements regarding times that VMS must be used by particular fisheries, vessels with pelagic longline gear onboard, which are required to use VMS units year round, would be required to provide 24/7 location reporting year round. Vessels with a shark limited access permit (LAP) and gillnet gear onboard would be required to provide 24/7 location signals from November 15 through April 15 of each year. Vessels with bottom longline gear onboard, and located between 33°00″ N. latitude and 36°30″ N. latitude would be required to provide 24/7 location signals from January 1 through July 31 each year. Fishermen would need to request a documented exemption from the VMS requirements if their VMS unit needs to be powered down for various reasons such as placing the vessel in drydock for repairs or suspending fishing activity for an extended period. Under those or similar situations, fishermen should

contact NOAA OLE to request a documented exemption.

Finally, NMFS is also proposing to modify the current hail-in regulations to require vessel operators to hail-in no more than 12 hours, and no less than three hours, before returning to port. Currently, vessel operators are required to hail-in at least three hours prior to returning to port to specify where they will be landing, but no restriction exists on how far in advance a hail-in declaration can be made prior to landing. Some vessel operators on multi-day trips submit hail-ins days in advance of landing, thus making it difficult for NOAA OLE to plan dockside inspections of vessels landing HMS. By establishing a maximum time limit on when a hail-in can be submitted, NOAA OLE will be more efficient in coordinating inspections of vessels landing HMS to monitor compliance with, and enforce, HMS regulations.

NMFS conducted the following Regulatory Impact Review (RIR) to comply with Executive Order 12866 (E.O. 12866) and provide analyses of the economic benefits and costs of this proposed action to the nation and the fishery as a whole. The information contained in this document, taken together with the data and analysis incorporated by reference, comprise the complete RIR.

Neutral social and economic impacts from the proposed action are expected, as the proposed alternatives are not expected to increase reporting costs for affected vessels and would reduce reporting burden for many vessels. Table 1 provides a summary of the financial impact to affected vessels under the current VMS requirements. NMFS does not anticipate that the proposed changes to the VMS regulations would result in any change to current costs associated with VMS for most vessels because the hourly location signals are automated and most service providers include them in the base cost of the VMS unit plan. For those vessels with VMS plans that charge per location signal, the charge per signal is relatively small ($0.06 per signal), so the change to 24/7 hourly position reports should not result in a significant cost increase. However, there are additional benefits associated with the proposed action relative to the no-action alternative. For example, requiring 24/7 hourly position reports would provide NOAA OLE with enhanced communication with HMS vessel operators and provide valuable information concerning target species and gear possessed to facilitate enforcement of closed areas and other regulations. Requiring 24/7 reporting would also reduce the reporting burden on vessel operators by allowing them to hail-out when leaving port instead of doing so at least two hours in advance. Furthermore, allowing vessels not fishing for or retaining HMS for two or more consecutive trips to "declare out of the fishery" would reduce their overall reporting burden.

TABLE 1—ESTIMATED COSTS OF COMPLIANCE UNDER CURRENT VMS REGULATIONS IN AFFECTED HMS FISHERIES. NO CHANGE IN COSTS IS EXPECTED UNDER THE PROPOSED RULE FOR MOST VESSELS

	Pelagic longline vessels	Shark bottom longline vessels	Shark gillnet vessels
Monthly E–MTU VMS Unit Plans average including 24/7 Position Reports and data	$44.00	$44.00	$44.00.
Estimated Days (Months) Fishing/Year	324 (12)	212 (7)	152 (5).
Annual Compliance Costs/Vessel ($44/month * months fishing/year)	$528/vessel	$308/vessel	$220/vessel.
Annual Compliance Costs + Maintenance Costs ($500/year)	$1,028	$808	$720.
Annual Number of Fishing Trips	36	212	152.
Number of Affected Vessels	253	25	30.
Annual Cost for all Vessels	$260,084	$20,200	$21,600.

** The declaration costs per trip will vary based upon the number of target species and gear types possessed onboard as operators would be required to submit one declaration for each target fishery/fishing gear possessed.

Request for Comments

NMFS is requesting comments on any of the measures or analyses described in this proposed rule. Furthermore, NMFS also requests comments related to the economic impacts and reporting burden associated with this proposed rule, and any other VMS requirements placed on HMS fishermen for which modifications are not being proposed, including:

1. The proposed change to 24/7 reporting, whether the vessel is at sea or in port, unless the vessel operator has a documented power down exemption.

2. The option to declare out of the fishery when not fishing for or retaining HMS for two or more consecutive trips.

3. The proposed modifications to the advance timeframes associated with hail-out and hail-in requirements (i.e., eliminating the requirement to hail-out two hours in advance of leaving port, and requiring vessels to hail-in no less than three hours, but no more than twelve hours, before returning port).

4. The time and costs associated with having an E–MTU VMS unit installed by a qualified marine electrician.

5. The time and costs associated with operation of the E–MTU VMS unit, and the time and costs associated with issuing transmissions (i.e., hail-out/hail-in, declarations) from the E–MTU VMS unit.

Comments on this proposed rule may be submitted via *http://www.regulations.gov*, mail, or fax. Comments may also be submitted during the public hearing call-in and webinar (see **DATES** and **ADDRESSES**). Comments must be received by September 30, 2013. NMFS is holding one public hearing via conference call and webinar for this proposed rule. NMFS reminds the public that participants at the public hearings should conduct themselves appropriately. At the beginning of the conference call, a moderator will explain the ground rules (e.g., attendees will be called to give their comments in the order in which they are received; each attendee will have an equal amount of time to speak; and, participants should address one another in a respectful manner). All members of the public participating in the conference call will have the opportunity to comment, if they so choose. Participants that do not respect the ground rules will be removed from the conference call. NMFS will also discuss the proposed rule with the HMS Advisory Panel during the week of September 9, 2013; the details of that meeting were published in a separate **Federal Register** notice on July 23, 2013 (78 FR 44095).

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated

HMS Fishery Management Plan (FMP) and its amendments, the MSA and National Standards, and other applicable law, subject to further consideration after public comment. Upon review, we have determined that this action will not result in significant adverse effects, individually or cumulatively, on the human environment. Therefore, the action may appropriately be categorically excluded from the requirement to prepare either an environmental assessment or environmental impact statement in accordance with Section 6.03c.3(i) of NAO 216–6. This action would not affect fishing effort, quotas, fishing gear, authorized species, or interactions with threatened or endangered species.

Executive Order 12866

Under E.O. 12886, the Office of Management and Budget (OMB) has determined this rule to be not significant.

Paperwork Reduction Act

This proposed rule would modify a collection-of-information requirement that has been previously approved by the Office of Management and Budget (OMB) under control number 0648–0372. The proposed modification in this rule is subject to review and approval by OMB under the Paperwork Reduction Act (PRA), and will be submitted for approval. There would be 308 vessel operators (respondents) that may be affected by this collection; however, the rule's proposed provisions would reduce the overall burden to vessel operators as opposed to increasing it. Under the current VMS requirements, HMS vessel operators are required to make two declarations per trip (2 minutes per declaration). Under the current regulatory requirements, NMFS calculated the number of trips made by HMS vessels per year for which they are required to make hail-out/hail-in declarations, and estimated that these trips would result in a total of 37,936 declarations and result in a total reporting burden of 1,264 hours, or 4.10 hours per vessel. NMFS estimates that the proposed action, which would allow for long-term declarations out of the fishery and exempt vessels from submitting declarations for each trip during that time frame, could theoretically reduce the average reporting burden hours for each vessel issuing a long-term declaration by as much as 4 hours if the declaration is issued for the entire fishing season. It is highly unlikely that vessels would declare out for the fishery for the entire season, but NMFS does not currently have an estimate of the number of vessels that may take advantage of the long-term declaration.

Regulatory Flexibility Act

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by 5 U.S.C. 603 of the Regulatory Flexibility Act (RFA), to analyze the economic impacts that this proposed rule would have on small entities. The full IRFA is included below.

Section 603(b)(1) of the RFA requires that the Agency describe the reasons the action is being considered. A description of the proposed action, why it is being considered, and the legal basis for this proposed action is described in more detail in the preamble to the proposed rule. The purpose of this proposed rulemaking, consistent with the MSA and the 2006 Consolidated HMS FMP and its amendments, is to aid NOAA OLE in compliance monitoring and enforcement of HMS fisheries regulations while also minimizing the reporting burden on fishermen. The proposed action would provide fishermen with additional flexibility regarding the hail-out requirement and also remove the option of turning the VMS off unless the vessel operator has obtained a documented power down exemption from NOAA OLE. Specifically, fishermen that hold an HMS permit and are required to use VMS could declare out of the fishery if they do not intend to fish for and retain HMS for two or more consecutive trips. This declaration would exempt them from the requirement to hail-out before every trip (which can be daily for some fisheries) and hail-in before returning from every trip, but does not exempt them from other applicable HMS regulations (e.g., gear requirements, time/area closures, etc.) or from applicable regulations in other fisheries, including VMS requirements. Additionally, fishermen would still need to operate their VMS units 24 hours a day, 7 days a week to provide hourly location signals for the duration of long-term declaration out of the fishery. Requiring VMS units remain on at all times would mean fishermen could hail-out while they are leaving port. These proposed changes are a direct result of public feedback that indicated the current hail-out requirements were burdensome. Finally, vessel operators would still be required to hail-in at least three hours before returning to port, but would also be required to do so no more than 12 hours before landing. These proposed changes considered the need of NOAA OLE agents to have information on target species and gear being deployed in order to facilitate enforcement of closed areas and other regulations.

Section 603(b)(2) of the RFA requires a succinct statement of the objectives of, and legal basis for, the proposed rule. The objectives of this proposed rulemaking are to consider changes to the HMS regulations at 50 CFR part 635 requiring the use of VMS in Atlantic HMS fisheries that would be less burdensome to fishermen while maintaining the information needed by NOAA OLE to monitor compliance and enforce the regulations. For example, properly functioning VMS units aid NOAA OLE in monitoring and enforcing closed areas implemented to reduce bycatch of undersized swordfish, sharks, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Standard 9 (bycatch and bycatch mortality reduction) of the MSA.

Under 5 U.S.C. 603(b)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Previously, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA has defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average annual receipts of less than $7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398; June 20, 2013). The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million.

NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action, and solicits public comment on the analyses in light of the new size standards. NMFS estimates that this proposed rule would require 308 vessel owners deploying

either pelagic longline, bottom longline, or gillnet gear in HMS fisheries to use their VMS units to send hourly location reports 24 hours a day, 7 days a week. The action would also allow vessel operators the option of making a long-term declaration out of the HMS fishery for any period of time encompassing two or more trips during which the vessel will not be fishing for or retaining HMS. Such a declaration would exempt the vessel from hail-in and hail-out requirements until the vessel resumes fishing for and retaining HMS at which time the vessel will need to resume hailing-out and hailing-in for each trip.

This proposed rule modified some existing reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Specifically, vessel operators that do not plan to fish for or retain HMS for a period of time encompassing two or more trips would be given the option to declare out of the HMS fishery which would exempt them from having to hail-out and hail-in for each trip. Additionally, the 308 HMS vessel operators currently required to use VMS units would be required to leave their VMS units on 24 hours a day, 7 days a week, to facilitate the delivery of hourly location signals to NOAA OLE. This requirement would also allow vessel operators pursuing HMS to wait until they leave port to issue the required hail-out as opposed to being required to do so at least two hours before leaving port. Finally, this proposed rule would also require vessel operators to hail-in at least three hours before returning to port, but no more than 12 hours before doing so.

This proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of laws, including, but not limited to, the MSA, ATCA, the High Seas Fishing Compliance Act, the MMPA, the ESA, the National Environmental Policy Act, and the Coastal Zone Management Act. The proposed regulations would not duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the MSA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. Thus, none of the alternatives being considered fall under the first and fourth categories described above.

Furthermore, because the purpose of this rulemaking is to modify existing VMS reporting requirements, the use of performance standards, such as those mentioned in the third category above, would not be suitable to achieve the goals of this rulemaking. Finally, the proposed modification to the hail-out/hail-in requirement is expected to reduce the burden of reporting for vessels not fishing for or retaining HMS and provide NOAA OLE agents with additional information to accurately monitor fishing activities. Furthermore, the proposed requirement for vessel operators to maintain power to the VMS unit 24 hours a day, 7 days a week will not increase burden over the current requirement (i.e., only having the VMS on while away from port and at least two hours before leaving port) because the hourly location signals are automated, the proposed change would eliminate the need for vessel operators to hail-out at least two hours before leaving port, and hourly location signals are included in the base cost of the VMS unit plans offered by most providers. Since the purpose of the current requirement to hail-out at least two hours before leaving port was to ensure NOAA OLE received at least one location signal from a vessel before it left port, switching to 24 hours a day, 7 days a week reporting under this proposed rule would make advance hail-outs unnecessary. As such, NMFS has determined that this rulemaking meets the objectives stated in the second category. NMFS analyzed several alternatives in this proposed rulemaking, and the rationale for selecting the preferred alternatives is provided below.

NMFS is considering two categories of issues related to the use of VMS by the Atlantic HMS fleet; each issue has its own set of alternatives. The first category (Alternatives A1–A2) addresses the required frequency of hourly location signals issued by VMS units used by HMS fishermen, and whether vessel operators should be allowed to power down their VMS units between trips. The second category (Alternatives B1–B3) addresses hail-out/hail-in requirements, and proposes the addition of long-term declarations (i.e., 'declare out of fishery' option) to the options available to vessels operating under HMS commercial permits. The preferred alternatives include Alternative A2 and Alternative B2. The potential economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the goals of this rule.

For the hourly position reports, Alternative A1, the no action alternative, would maintain the existing VMS requirements in Atlantic HMS fisheries which allow vessel operators to power down their VMS units while at port, and require them to power them back on at least two hours before leaving port for their next trip. Alternative A2 would require that Atlantic HMS vessels provide hourly position reports 24/7, during those periods of the year in which they are required to use VMS, unless extenuating circumstances (e.g., scheduled maintenance, putting the boat in drydock) warrant powering the VMS unit down. In such circumstances, vessel operators would need to contact NOAA OLE to request a documented power down exemption. Additionally, this alternative would eliminate the requirement for vessel operators to hail-out at least two hours before leaving port, and would instead allow them to wait until they are actually leaving port to hail-out. The justification for the current requirement to hail-out two hours before leaving port was to ensure VMS units would transmit at least one location signal while the vessel was still in port. The proposed change to 24/7 location reporting would thus obviate the need for this requirement. Alternative A2 would also require vessel operators to hail-in at least three hours before returning to port, but no more than 12 hours before doing so. NMFS is proposing this change because the open-ended requirement specified in the current regulations has allowed vessel operators to submit hail-in declarations days before returning to port, making it difficult for enforcement agents to determine when a vessel will actually return to port.

NMFS estimated the costs of 24/7 hourly position reports for all vessels by

calculating the average monthly costs from the five main providers of VMS units and services. The monthly cost of these plans ranges from $35 to $50 per month (average cost $44 per month) and includes 24/7 hourly position reports and data costs associated with messaging for declarations and hail-in/hail-outs. It is likely that this pricing model has been adopted because most fisheries using VMS already require 24/7 reporting. Annual costs of compliance for both alternatives for vessel owners are estimated to be $528, $308, and $220 per vessel for pelagic longline, bottom longline, and shark gillnet vessels, respectively (Table 1). NMFS does not anticipate these costs to be different from current monthly VMS costs for most HMS vessels since most VMS providers use plans that include 24/7 hourly position reports and data (for making hail-in/hail-outs and other declarations). For purposes of estimation, NMFS assumed continuous reporting over the course of the year, or that portion of the year in which HMS permitted vessels are required to use VMS. Additionally, maintenance costs for VMS units are estimated at $500 per vessel per year, but changing to 24/7 reporting is not expected to affect these costs. Changing to 24/7 position reporting would, however, eliminate the need for vessel operators to hail-out at least two hours before leaving port, thus giving them greater flexibility in planning their trip schedules.

Next, NMFS considered alternatives to modify the current hail-in/hail-out reporting requirements to include long-term declarations that can apply to multiple trips. Alternative B1, the no action alternative, would maintain the current hail-in/hail-out declaration requirements. HMS vessel operators required to use VMS currently must hail-out and hail-in for each fishing trip in addition to submitting a declaration indicating which species they will be targeting, and the gear they will be fishing. Alternative B2, the preferred alternative, would allow for vessels not fishing for or retaining HMS for two or more trips to advise NMFS as such by issuing a declaration out of the fishery. Vessels under a long-term declaration out of the fishery would be exempted from issuing hail-in/hail-out declarations each trip, but would still be required to follow all other Atlantic HMS regulations including continuing to provide 24/7 location signals on their VMS units. Vessels operating under the proposed long-term declaration would still have the option to land HMS if they catch them incidentally, but would have to first declare back into the HMS fishery and issue a hail-in at least three hours, and no more than twelve hours, before returning to port.

Based on public comments received, NMFS assumed that many, if not all, shark gillnetters and bottom longliners would declare out of the HMS fishery for at least part of the season in which they are required to use VMS. NMFS expects few, if any, fishermen using pelagic longline to declare out of the HMS fishery as most of these vessels target HMS almost exclusively. Therefore, to assess the effect of Alternatives B2 on reporting burden, NMFS estimated the total number of HMS fishing trips that bottom longline vessels from Virginia to South Carolina and shark gillnet vessels could annually take and thus be required to make daily hail-in/hail-outs (Table 1). The estimates vary by gear type possessed onboard. Bottom longline vessels primarily target large coastal sharks (LCS) and Council-managed species (snapper/grouper, tilefish, etc.). Bottom longline vessels from Virginia to South Carolina (between 33°00′ N. latitude and 36°30′ N. latitude) are required to use VMS to provide hourly position signals from January 1st to July 31st of each year to facilitate enforcement of the Mid-Atlantic bottom longline closed area. In recent years, except for 2013, the seasons for LCS in the Atlantic region have not opened until July 15, resulting in a two-week period where vessels could be fishing for or retaining LCS with bottom longline gear and would be required to use VMS. However, seasons for small coastal sharks (SCS), pelagic sharks, and Council-managed species also require consideration as affected vessels may be fishing for other species with bottom longline gear onboard. NMFS assumes that approximately 50 bottom longline vessels could be fishing (day trips) in the vicinity (between 33°00′ N. latitude and 36°30′ N. latitude) of the Mid Atlantic bottom longline closed area where VMS is required during the entire 212 day-closure (January 1–July 31), resulting in 212 trips per year. Shark gillnet vessels can target LCS, SCS, and Council-managed species, but have targeted sharks less in recent years. The gillnet fishery primarily targets small coastal sharks (SCS) and blacktip sharks (included in the aggregate LCS management group in the Atlantic region and as its own management group in the Gulf of Mexico region). Season length for the different shark management groups varies annually based on quota availability, catch rates, and other considerations. Many shark gillnet vessel owners have been issued permits that allow them to participate in other fisheries using gillnet gear; therefore, to estimate burden, NMFS assumed that affected vessels could be engaged in fishing activities and subject to VMS requirements from November 15–April 15 for the duration of this time period every year (152 days). NMFS also assumed that vessels would return to port once every 24 hours to offload catch and procure supplies. Based on public comments, NMFS expects many gillnetters and bottom longliners would make long-term declarations out of the fishery if given the option, which would require them to make only one declaration report. However, if HMS are caught during a trip and the fishermen wish to land them, they must declare back in to the HMS fishery and then provide NOAA OLE with a hail-in at least three hours, and no more than twelve hours, before returning to port. While NMFS does not expect there to be a difference in costs for vessel operators between Alternatives B1 and B2, Alternative B2 could result in a substantial reduction in reporting burden for vessels not fishing for or retaining HMS. For this reason and because the enforcement capabilities are the same under either alternative, we prefer Alternative B2 at this time.

Finally, Alternative B3 would allow vessels fishing for the same HMS with the same gear for two or more consecutive trips to make long-term declarations into the HMS fishery which would exempt them from making daily hail-out declarations, but would still require them to hail-in before landing HMS. NMFS determined that pelagic longline vessels would be most likely to take advantage of a long-term declaration into the HMS fishery as many of those vessels target HMS almost exclusively. Logbook data (2006–2009) for pelagic longline vessels indicates that across all regions and months of the year, vessels make approximately 6.7 sets per trip. Each set takes approximately one day. For the purpose of estimation, seven sets per trip were used in the following calculations. Vessels would require at least one day transiting to and from fishing grounds and at least one day in between fishing trips for offloading. Therefore, NMFS estimates that average pelagic longline trips are 10 days (7 days fishing + 2 days transit + 1 day offload/resupply) in duration, meaning vessels could make up to 36 complete trips per year (365 days per year/10 days per trip). Under Alternative B3, aside from the initial long-term declaration into the fishery, declaration reports would only be required prior to the

vessels return to port (1 declaration/trip). Assuming the vessels make 36 trips per year, they would submit 37 declarations (36 trips per year * 1 declaration per trip + 1 long-term declaration into the fishery = 37 declarations per year), which are included in the cost of the VMS unit plans offered by most providers. These calculations would represent a maximum possible burden on pelagic longline vessels in Alternative B3 were adopted. NMFS assumed that costs will vary slightly among individual vessel owners based on the number of days at sea per year, the VMS provider, and the number of messages sent and received using the VMS unit. While NMFS does not expect there to be a difference in costs for vessel operators between Alternatives B1 and B3, Alternative B3 would result in a reduction in reporting burden for vessels exclusively fishing for HMS as they would only have to make one declaration per trip. However, because this alternative would potentially complicate NOAA OLE's ability to monitor vessels fishing for HMS by reducing the frequency of communication with fishermen, and eliminating notification of when HMS trips are beginning, this alternative is not preferred at this time.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 23, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions ond duties of the Deputy Assistont Administrator for Regulatory Programs, National Morine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635, as proposed to be amended at 78 FR 52032, August 21, 2013, is further proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.69, paragraphs (a)(1) through (3), paragraph (d) introductory text, and paragraphs (e)(1) through (3) are revised, and paragraph (e)(5) is added to read as follows:

§ 635.69 Vessel monitoring systems.

(a) * * *

(1) Whenever the vessel has pelagic longline or purse seine gear on board;

(2) Whenever a vessel issued a directed shark LAP, has bottom longline gear on board, is located between 33°00′ N. lat. and 36°30′ N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or

(3) Whenever a vessel issued a directed shark LAP has a gillnet(s) on board from November 15–April 15.

* * * * *

(d) *Installation and activation.* Only an E–MTU VMS that has been approved by NMFS for Atlantic HMS Fisheries may be used. Any VMS unit must be installed by a qualified marine electrician. When any NMFS-approved E–MTU VMS is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

* * * * *

(e) * * *

(1) Owners or operators of vessels subject to requirements specified in paragraph (a) of this section must ensure the VMS unit is on so that it will submit automatic position reports every hour, 24 hours a day. Except as otherwise noted in this paragraph, the VMS unit must always be on, operating and reporting without interruption, and NMFS enforcement must receive hourly position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement. Owners of vessels may request a documented power down exemption from NMFS enforcement if the vessel will not be fishing for an extended period of time. The request must describe the reason an exemption is being requested; the location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and sufficient information to determine that a power down exemption is appropriate. Approval of a power down must be documented and will be granted, at the discretion of NMFS enforcement, only in certain circumstances (*e.g.*, when the vessel is going into dry dock for repairs, or will not be fishing for an extended period of time).

(2) Prior to departure for each trip, a vessel owner or operator must initially report to NMFS any highly migratory species the vessel will target on that trip and the specific type(s) of fishing gear that will be on board the vessel, using NMFS-defined gear codes. If the vessel owner or operator participates in multiple HMS fisheries, or possesses multiple fishing gears on board the vessel, the vessel owner or operator must submit multiple electronic reports to NMFS. If, during the trip, the vessel switches to a gear type or species group not reported on the initial declaration, another declaration must be submitted before this fishing begins. This information must be reported to NMFS using an attached VMS terminal or using another method as instructed by NMFS enforcement.

(3) A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours and no more than 12 hours in advance of landing regardless of trip duration. This information must be reported to NMFS using an attached VMS terminal and must include the date, approximate time, and location of landing.

* * * * *

(5) Vessel owners or operators that decide not to fish for or retain HMS for a period of time encompassing two or more trips may follow the requirements of this paragraph in lieu of paragraphs (e)(2) and (3) of this section.

(i) If a vessel owner or operator decides not to fish for or retain HMS for a period of time encompassing two or more trips, that owner or operator may choose to "declare out" of the fishery. To "declare out," the vessel owner or operator must contact NMFS using an attached VMS terminal to indicate the operator does not plan to fish for or retain HMS. By "declaring out" of the HMS fishery, the vessel owner or operator is exempt from the requirements of paragraphs (e)(2) and (3) of this section, unless the circumstances described in (e)(5)(ii) apply, but must still comply with all other HMS regulations that are applicable to the vessel including area and gear closures.

(ii) If a vessel owner or operator has advised NMFS that it will not be fishing for or retaining HMS as described in paragraph (e)(5)(i) of this section, but incidentally catches and retains any HMS while fishing, the vessel owner is required to change the target species declaration and advise NMFS as described in paragraph (e)(2) of this section while at sea before returning to port with any HMS. The vessel must also report advance notice of landing to NMFS as described in paragraph (e)(3) of this section.

(iii) Once the vessel owner or operator changes the declaration per paragraph

(e)(5)(ii) of this section, that vessel is assumed to be fishing under the requirements of paragraphs (e)(1) through (3) of this section until the vessel owner or operator makes another declaration under this paragraph (e)(5).

* * * * *

[FR Doc. 2013–21067 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100120035–3705–02]

RIN 0648–AY26

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 14

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 14 to the Atlantic Mackerel, Squid and Butterfish Management Plan. The Mid-Atlantic Fishery Management Council developed Amendment 14 to improve catch monitoring for the Atlantic mackerel, squid, and butterfish fisheries and to address incidental catch of river herring and shad through responsible management. Amendment 14 management measures include: Revising dealer and vessel reporting requirements, and requirements for vessel monitoring systems; increasing observer coverage on midwater trawl mackerel and Tier 1, 2 and 3 small-mesh bottom trawl mackerel vessels; implementing partial industry funding for observer coverage; revising vessel requirements to improve at-sea sampling by observers; establishing slippage caps to discourage the discarding of catch prior to sampling by observers; and establishing a mortality cap for river herring and shad with amounts to be set during specifications.

DATES: Public comments must be received on or before October 11, 2013.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Impact Statement (EIS) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov.*

You may submit comments on this document, identified by NOAA–NMFS–2013–0128, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0128*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the MSB Amendment 14 Proposed Rule."
- *Fax:* (978) 281–9135, Attn: Aja Szumylo.

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northeast Regional Office and by email to *OIRA Submission@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978–281–9195, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2010 (75 FR 32745), the Council published a notice of intent (NOI) to prepare an EIS for Amendment 14 to the Atlantic mackerel, squid, and butterfish (MSB) Fishery Management Plan (FMP) to consider measures to: Implement catch share systems for the squid fisheries, increase fishery monitoring to determine the significance of river herring and shad incidental catch in the MSB fisheries, and measures to minimize bycatch and/or incidental catch of river herring and shad. The Council subsequently conducted scoping meetings during June 2010 to gather public comments on these issues. Based on the comments submitted during scoping, the Council removed consideration of catch shares for squids from Amendment 14 at its August 2010 meeting.

Following further development of Amendment 14, the Council conducted Magnuson-Stevens Fishery Conservation and Management Act (MSA) and National Environmental Policy Act public hearings in April and May 2012, and, following the public comment period on the draft EIS that ended on June 4, 2012, the Council adopted Amendment 14 on June 14, 2012. The Council submitted Amendment 14 to NOAA Fisheries Service (NMFS) for review on February 26, 2012. Following a series of revisions, the Council submitted a revised version of Amendment 14 to NMFS on June 3, 2013. This action proposes management measures that were recommended by the Council in Amendment 14. If implemented, these management measures would:

- Require weekly vessel trip reports (VTRs) for all MSB permits, consistent with VTR provisions for other fisheries;
- Require a 48-hr pre-trip notification in order to retain, possess, or transfer more than 20,000 lb (9.07 mt) of Atlantic mackerel (mackerel) in order to facilitate observer placement;
- Require the use of vessel monitoring systems (VMS), as well as the submission of daily VMS catch reports, for limited access mackerel and longfin squid/butterfish moratorium permits to facility quota monitoring;
- Require a 6-hr pre-landing notification via VMS in order to land more than 20,000 lb (9.07 mt) of mackerel, to facilitate enforcement;
- Expand dealer reporting requirements;
- Increase observer coverage on limited access mackerel vessels using midwater and small-mesh bottom trawl, and require industry contributions of $325 per day;
- Expand vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Establish measures to minimize the discarding of catch before it has been made available for sampling;
- Require that the Council meet formally to review the results of the

Sustainable Fisheries Coalition/ University of Massachusetts Dartmouth School of Marine Science and Technology river herring and shad bycatch avoidance project, and consider the appropriateness of developing a framework adjustment to implement the catch avoidance strategies suggested in the study;

- Establish a mortality cap for river herring and shad to directly control mortality in the mackerel fishery, with cap amounts set during the development of specifications; and
- Add river herring and shad mortality caps and time/area hotspot closures to the list of measures that can be addressed via framework adjustment.

A Notice of Availability (NOA) for Amendment 14, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on August 12, 2013 (78 FR 48852). The comment period on Amendment 14 NOA ends on October 11, 2013. Comments submitted on the NOA and/or this proposed rule prior to October 11, 2013, will be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 14. NMFS will consider comments received by the end of the comment period for this proposed rule October 15, 2013 in its decision regarding measures to be implemented.

Proposed Measures

The proposed regulations are based on the measures in Amendment 14, and contain many measures that would improve data collection and reduce catch of river herring and shad and that can be administered by NMFS. NMFS supports improvements to fishery dependent data collections, either through increasing reporting requirements or expanding the at-sea monitoring of the MSB fisheries. NMFS also shares the Council's concern for reducing incidental catch and unnecessary discarding. However, NMFS believes that a few measures in Amendment 14 may lack adequate rationale or development by the Council, and NMFS has concerns about the potential utility and legality of the approval and implementation of these measures. These measures include: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers to return to port; and a recommended 100-percent observer coverage on midwater trawl and Tier 1 small-mesh bottom trawl mackerel vessels, 50 percent coverage on Tier 2 small-mesh bottom trawl mackerel vessels, and 25 percent on Tier 3 small-mesh bottom trawl mackerel vessels, with the industry contributing $325 per day toward observer costs.

The measures NMFS has concern with in Amendment 14 are the same or similar to measures that NMFS disapproved on July 19, 2013, in the New England Fishery Management Council's (NEFMC) Amendment 5 to the Atlantic Herring FMP (Amendment 5). A proposed rule to implement Amendment 5 (78 FR 33020) was published on June 3, 2013, with a comment period ending July 18, 2013. A summary of the comments received, NMFS's responses to those comments, and the full rationale for the disapproval of certain measures, will be published in the final rule implementing Amendment 5.

This proposed rule for Amendment 14 describes potential concerns about these measures' consistency with the MSA and other applicable law, and summarizes the disapproval rationale for similar measures in Amendment 5. While the measures disapproved in Amendment 5 are very similar to measures in Amendment 14, we are considering the two actions and their supporting analyses separately. Following public comment, NMFS will determine if these measures in Amendment 14 can be approved or if they must be disapproved. NMFS seeks public comments on all proposed measures in Amendment 14, and in particular, NMFS seeks public comment on the proposed measures for which NMFS has approvability concerns.

Amendment 14 proposes several measures to address the catch of river herring and shad in the mackerel fishery. River herring (the collective term for alewife and blueback herring) and shad (American shad and hickory shad) are anadromous species that co-occur seasonally with mackerel and are harvested as incidental catch in the mackerel fishery. For the purposes of this rulemaking, the term "river herring and shad" refers to all four species. When river herring are encountered in the mackerel fishery, they are either discarded at sea (bycatch) or retained and sold as part of the mackerel catch (incidental catch). For the purposes of this rulemaking, the terms bycatch and incidental catch are used interchangeably.

Several sections of regulatory text affected by Amendment 14 are also affected by Amendment 5. The proposed regulations for both actions will present adjustments to the existing regulatory text. In the likely event that Amendment 5 is finalized prior to Amendment 14, the finalized regulations for Amendment 14 will be presented as modifications to the regulations that will be implemented in Amendment 5, and will thus differ in structure, but not content, from the regulations as presented in this proposed rule. The adjustments will be similar to those in this proposed rule.

1. Adjustments to the Fishery Management Program

Amendment 14 would revise several existing fishery management provisions, including dealer reporting requirements, VTR requirements, and VMS requirements and reporting.

VTR Frequency Requirements

Currently MSB permit holders are required to submit fishing vessel logs, known as VTRs, on a monthly basis. Amendment 14 would implement a weekly VTR submission requirement for all MSB permits. This measure would require that VTRs be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If an MSB permit holder did not make a trip during a given reporting week, a vessel representative would be required to submit a report to NMFS stating so by midnight of the first Tuesday following the end of the reporting week. Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) would constitute fishing during that reporting week and would eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel began a fishing trip on Wednesday, but returned to port and offloaded its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (i.e., a "did not fish" report) would not be required for either earlier week. If implemented, the weekly VTR reporting requirement would bring MSB reporting requirements in line with other Northeast Region fisheries, improve monitoring of directed and incidental catch, and facilitate cross-checking with other data sources.

VMS Requirement, Daily Catch Reports and Pre-Landing Notifications

Amendment 14 would implement VMS requirements for vessels with limited access mackerel permits and longfin squid/butterfish moratorium permits to improve monitoring of directed and incidental catch. Currently, vessels with these permits are not required to have VMS, to submit catch reports, or to submit pre-landing notifications, although many vessels already possess VMS units due to

requirements for other fisheries for which they hold permits.

Amendment 14 would require limited access mackerel and longfin squid/butterfish moratorium permit holders to purchase and maintain a VMS unit. Vessels would be required to declare into the fishery for trips targeting mackerel or longfin squid, and would be required to transmit location information at least every hour, 24 hours a day, throughout the year (see existing operating requirements at § 648.10(c)(1)(i)). Vessel owners may request a letter of exemption from the NMFS Regional Administrator for permission to power down their VMS units if the vessel is out of the water for more than 72 consecutive hours (see existing Power-down exemption regulations at § 648.10(c)(2)). Vessels that do not already have VMS units installed would have to confirm that their VMS units were operational by notifying the NMFS Office of Law Enforcement (OLE) (see existing installation notification procedures at § 648.10(e)(1)).

Amendment 14 would require daily VMS catch reporting for all limited access mackerel permits and longfin squid/butterfish moratorium permits. Daily VMS catch reports would need to include: The VTR serial number for the current trip; month and day mackerel and/or longfin squid were caught; and total pounds retained and total pounds discarded. Daily mackerel and/or longfin squid VMS catch reports would need to be submitted in 24-hr intervals for each day and would have to be submitted by 0900 hr of the following day. Reports would be required even if mackerel and/or longfin squid caught that day had not yet been landed. Amendment 14 would also require that vessels landing more than 20,000 lb (9.07 mt) of mackerel submit a pre-landing notification, in which the vessel would report the time and place of offloading. That notification must be submitted at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing.

Dealer Reporting Requirement

During the development of Amendment 14, some stakeholders expressed concern that MSB catch is not accounted for accurately and that there needs to be a standardized method to determine catch. In an effort to address those concerns, Amendment 14 would require MSB dealers to accurately weigh all fish or use volume-to-weight conversions for all transactions with over 2,500 lb (1.13 mt) of longfin squid or 20,000 lb (9.07 mt) of mackerel. If catch is not sorted by species, dealers would be required to document for each transaction how they estimate relative species composition.

During the development of Amendment 14, NMFS identified potential concerns with the utility of this measure. Dealers are currently required to accurately report the weight of fish, which is obtained by scale weights and/or volumetric estimates. Because this proposed measure does not specify how fish are to be weighed, the measure may not change dealer behavior and, therefore, the requirement may not lead to any measureable change in the accuracy of catch weights reported by dealers. Further, this measure does not provide standards for estimating species composition. Without standards for estimating species composition or for measuring the accuracy of the estimation method, NMFS may be unable to evaluate the sufficiency of methods used to estimate species composition. For these reasons, the requirement for dealers to document the methods used to estimate species composition may not improve the accuracy of dealer reporting.

While the measure requiring dealers to document methods used to estimate species composition may not have direct utility in monitoring catch in the mackerel and longfin squid fisheries, it may still inform NMFS' and the Council's understanding of the methods used by dealers to determine species weights. That information may aid in development of standardized methods for purposes of future rulemaking. Furthermore, full and accurate reporting is a permit requirement; failure to do so could render dealer permit renewals incomplete, precluding renewal of the dealer's permit. Therefore, there is incentive for dealers to make reasonable efforts to document how they estimate relative species composition, which may increase the likelihood that useful information will be obtained as a result of this requirement.

Amendment 5 contained a dealer reporting requirement similar to the one proposed here in Amendment 14. The Amendment 5 measure would have required identical reporting measures for herring dealers related to all Atlantic herring transactions. NMFS disapproved this measure in Amendment 5 because we believe that it does not comply with National Standard 7's requirement to minimize costs and avoid unnecessary duplication, and the Paperwork Reduction Act's (PRA) requirement for the utility of the measure to outweigh the additional reporting and administrative burden on the dealers.

In light of the foregoing, NMFS seeks public comment on the extent to which the proposed Amendment 14 measure has practical utility, as required by the MSA and the PRA, that outweighs the additional reporting and administrative burden on the dealers. In particular, NMFS seeks public comment on whether and how the proposed measure would help prevent overfishing, promote the long-term health and stability of the mackerel and longfin squid resources, monitor the fisheries, facilitate in-season management, or judge performance of the management regime.

2. Adjustments to At-Sea Catch Monitoring

One of the primary goals of Amendment 14 is to improve catch monitoring in the mackerel and longfin squid fisheries. Amendment 14 would codify a number of requirements to facilitate At-Sea Catch Monitoring, including adding a pre-trip notification for mackerel, observer assistance requirements, and proper notice of pumping and/or net haulback for observers in the mackerel and longfin squid fisheries. Amendment 14 would also revise observer coverage levels and establish new provisions, such as industry funding to pay for increased observer coverage and measures to minimize the discarding of catch before it has been sampled by an observer, to monitor catch in the mackerel fishery.

Pre-Trip Notification in the Mackerel Fishery

Amendment 14 would require a 48-hr pre-trip notification for all vessels intending to retain, possess or transfer 20,000 lb (9.07 mt) or more of Atlantic mackerel in order to facilitate observer placement. Currently mackerel vessels have no pre-trip notifications. This measure would assist NMFS's scheduling and deployment of observers on directed mackerel trips, with minimal additional burden on the industry, helping ensure that observer coverage target for the mackerel fishery is met. The list of information that must be provided to NMFS as part of this pre-trip observer notification is described in the proposed regulations. If this measure is approved, details of how vessels should contact NMFS will be provided in the small entity compliance guide. If a vessel operator is required to notify NMFS to request an observer before embarking on a fishing trip, but does not notify NMFS before beginning the fishing trip, that vessel would be prohibited from possessing, harvesting,

or landing more than 20,000 lb (9.07 mt) of mackerel on that trip. If a fishing trip is cancelled, a vessel representative must notify NMFS of the cancelled trip, even if the vessel is not selected to carry observers. All waivers or selection notices for observer coverage would be issued by NMFS to the vessel via VMS so the vessel would have an on-board verification of either the observer selection or waiver.

Observer Assistance Requirements

Northeast fisheries regulations (found at 50 CFR part 648) specify requirements for vessels carrying NMFS-approved observers, such as providing observers with food and accommodations equivalent to those available to the crew; allowing observers to access the vessel's bridge, decks, and spaces used to process fish; and allowing observers access to vessel communication and navigations systems. Amendment 14 would expand these requirements, such that vessels issued limited access mackerel and longfin squid/butterfish moratorium permits and carrying NMFS-approved observers must provide observers with the following: (1) A safe sampling station adjacent to the fish deck, and a safe method to obtain and store samples; (2) reasonable assistance to allow observers to complete their duties; (3) advance notice when pumping or net haulback will start and end and when sampling of the catch may begin; and (4) visual access to net/codend or purse seine and any of its contents after pumping has ended, including bringing the codend and its contents aboard if possible. These measures are anticipated to help improve at-sea catch monitoring in the mackerel and longfin squid/butterfish fisheries by enhancing the observer's ability to collect quality data in a safe and efficient manner. Currently many vessels already provide this assistance.

Observer Coverage Levels

Currently, observer coverage in the MSB fisheries is determined by the Northeast Fisheries Science Center, based on the standardized bycatch reporting methodology (SBRM), after consultations with the Council, and funded by NMFS. In Amendment 14, the Council recommended increases in the observer coverage in the mackerel fishery, specifically 100-percent observer coverage on all limited access mackerel vessels using midwater trawl (i.e., Tiers 1, 2 and 3) and Tier 1 mackerel vessels using small-mesh bottom trawl, 50-percent coverage on Tier 2 mackerel vessels using small-mesh bottom trawl, and 25-percent on Tier 3 mackerel vessels using small-mesh bottom trawl. Many stakeholders believe that this measure is necessary to accurately determine the extent of incidental catch of river herring and shad in the mackerel fishery. The Council recommended this measure to gather more information on the mackerel fishery so that it may better evaluate and, if necessary, address issues involving catch and discarding. The increased observer coverage recommendations are coupled with a target maximum industry contribution of $325 per day. The at-sea costs associated with an observer in the mackerel fishery are higher than $325 per day and, currently, there is no mechanism to allow cost-sharing of at-sea costs between NMFS and the industry.

Throughout the development of Amendment 14, NMFS advised the Council that Amendment 14 must identify a funding source for increased observer coverage because NMFS's annual appropriations for observer coverage are not guaranteed. Because Amendment 14 does not identify a funding source to cover all of the increased costs of observer coverage, the proposed increase in coverage levels many not be sufficiently developed to approve at this time.

Amendment 5 contains similar observer coverage measures to those proposed in Amendment 14. NMFS disapproved the 100-percent observer coverage requirement and the $325 per day industry contribution in Amendment 5 because the amendment did not identify a funding source to cover all of the increased costs of observer coverage. The Amendment 5 measures would have required 100-percent observer coverage on Category A and B herring vessels, with a target maximum industry contribution of $325 per day. For both the Atlantic herring and mackerel fisheries, the at-sea costs associated with an observer are higher than $325 per day. The Department of Commerce (DOC) Office of General Counsel has advised that such cost-sharing violates the Anti-Deficiency Act. Based on DOC's advice, there is no current legal mechanism to allow cost-sharing of at-sea costs between NMFS and the industry. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery. Requiring 100-percent observer coverage would amount to an unfunded mandate.

NMFS is working with both the Mid-Atlantic and New England Fishery Management Councils to address the funding challenges identified in Amendments 14 and 5. A technical team comprised of Mid-Atlantic Fishery Management Council, New England Fishery Management Council and NMFS staff is currently attempting to develop a legal mechanism to allow the at-sea costs of increased observer coverage to be funded by the industry. Even if the specified recommended observer coverage measures in Amendment 14 cannot be approved at this time, the team will continue to work on finding a funding solution to pay for the at-sea cost of observer coverage in the mackerel fishery. If the technical team can develop a legal way to fund the at-sea costs of increased observer coverage for the mackerel fishery, a measure requiring increased observer coverage in line with the Council's recommendations could be implemented in a future action, subject to NMFS's budget appropriations and other observer data collection needs in the Northeast Region and elsewhere in the country.

Other measures proposed in Amendment 14 would help improve monitoring in the mackerel fishery, regardless of whether the increased observer coverage measure is approved at this time. These proposed measures include the requirement for vessels to contact NMFS at least 48 hr in advance of a fishing trip to facilitate the placement of observers, and observer sample station and reasonable assistance requirements to improve an observer's ability to collect quality data in a safe and efficient manner.

The same measure that would require increased observer coverage, coupled with a maximum $325 contribution by the industry, would also require that: (1) The increased observer coverage requirement would be re-evaluated by the Council 2 years after implementation; (2) the increased observer coverage requirement would be waived if no observers were available; and (3) observer service provider requirements for the Atlantic sea scallop fishery would apply to observer service providers for the mackerel fishery. Because these additional measures appear inseparable from the increased observer coverage requirement, their approval or disapproval is dependent upon the approvability of the partially industry-funded increased observer coverage measure.

Measures To Prevent Catch Discards Before Observer Sampling

Amendment 14 would require limited access mackerel and longfin squid moratorium vessels to bring all catch aboard the vessel and make it available for sampling by an observer. The Council recommended this measure to

improve the quality of at-sea monitoring data by reducing the discarding of unsampled catch. If catch is discarded before it has been made available to the observer for sampling, that catch is defined as slippage. Fish that cannot be pumped and remain in the net at the end of pumping operations are considered operational discards and not slipped catch. Some stakeholders believe that slippage is a serious problem in the mackerel and longfin squid fisheries because releasing catch before an observer can estimate its species composition undermines accurate catch accounting.

Amendment 14 would allow catch to be slipped if: (1) Bringing catch aboard compromises the safety of the vessel or crew; (2) mechanical failure prevents the catch from being brought aboard; or (3) spiny dogfish prevents the catch from being pumped aboard. If catch is slipped, even for the exempted reasons, the vessel operator would be required to complete a released catch affidavit within 48 hr of the end of the fishing trip. The released catch affidavit would detail: (1) Why catch was slipped; (2) an estimate of the quantity and species composition of the slipped catch and any catch brought aboard during the haul; and (3) the time and location of the slipped catch. Additionally, Amendment 14 would establish slippage caps for the mackerel fishery. Once there have been 10 slippage events by limited access mackerel vessels that are carrying an observer, limited access mackerel vessels that subsequently slip catch while carrying an observer would be required to immediately return to port. NMFS would track slippage events and notify the fleet once a slippage cap had been reached. The Council recommended these slippage caps to discourage the inappropriate use of the slippage exceptions, and to allow for some slippage, without unduly penalizing the fleet.

Amendment 5 contained a slippage measure similar to that proposed here in Amendment 14. The Amendment 5 measures would prohibit slippage on limited access herring trips with an observer aboard, would require a released catch affidavit to document slippage events, and would require trip termination after 10 slippage events in a herring management area by vessels using a particular gear type (including midwater trawl, bottom trawl, and purse seine). NMFS did approve the prohibition on slippage and the released catch affidavit requirement in Amendment 5. However, we were concerned about the rationale for, and legality of, the slippage caps in Amendment 5, and ultimately disapproved that aspect of the measure. We found the slippage caps in Amendment 5 to be inconsistent with National Standards 2 and 10. The threshold for triggering a slippage cap (10 slippage events by area and gear type) does not have a strong biological or administrative justification in the supporting analysis in the EIS for Amendment 5, which made approval of this measure inconsistent with National Standard 2. Once a slippage cap has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. In addition, the structure of this measure in Amendment 5 raises safety concerns, implicating National Standard 10 of the Magnuson-Stevens Act, because a vessel operator may be forced to bring catch aboard, despite dangerous conditions, to avoid returning to port.

Throughout the development of Amendment 14, NMFS expressed concerns with the rationale for, and legality of, the slippage caps for the Atlantic mackerel fleet. The need for, and threshold for triggering, a slippage cap (10 slippage events for the entire fleet) does not have a strong biological or operational basis. From 2006–2010 approximately 26 percent (73 of 277 or 15 per year) of hauls on observed mackerel trips (trips that caught 50 percent or more mackerel or at least 100,000 lb (45.34 mt) of mackerel) had some unobserved catch. Hauls may be unobserved for a variety of reasons—for example, transfer of catch to another vessel without an observer, observers not being on deck to sample a given haul, or hauls released from the net while still in the water. The estimate of 15 unobserved hauls per year would thus be an upper bound on slippage events. Once a slippage cap has been met, vessels that slip catch with an observer aboard for reasons other than safety, mechanical failure, or spiny dogfish in the pump would be required to return to port. Vessels could continue fishing following slippage events 1 thorough 10, but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. The Council's analysis noted that while documents slippage events are relatively infrequent, increases above the estimated 15 unobserved hauls per year could compromise observer data because large quantities of fish can be caught in a single tow. However, the Council's analysis does not provide sufficient rationale for why it is biologically or operationally acceptable to allow the fleet 10 un-exempted slippage events prior to triggering the trip termination requirement.

The measures to minimize slippage are based on the sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I. However, there are important differences between these measures. Under the Closed Area I requirements, if midwater trawl vessels slip catch, they are allowed to continue fishing, but they must leave Closed Area I for the remainder of that trip. The requirement to leave Closed Area I is less punitive than the proposed requirement to return to port. Additionally, because the consequences of slipping catch apply uniformly to all vessels under the Closed Area I requirements, inequality among the fleet is not an issue for the Closed Area I requirements, like it appears to be for the proposed slippage caps.

In 2010, the Northeast Fisheries Observer Program (NEFOP) revised the training curriculum for observers deployed on herring vessels to focus on effective sampling in high-volume fisheries. NEFOP also developed a discard log to collect detailed information on discards in the high-volume fisheries, including slippage, such as why catch was discarded, the estimated amount of discarded catch, and the estimated composition of discarded catch. Recent slippage data collected by observers indicate that information about these events, and the amount and composition of fish that are slipped, has improved, and that the number of slippage events has declined. Given NEFOP's recent training changes and its addition of a discard log, NMFS believes that observer data on slipped catch, rather than released catch affidavits, provide the best information to account for discards. However, there is still a compliance benefit to requiring a released catch affidavit because it would provide enforcement with a sworn statement regarding the operator's decisions and may help to understand why slippage occurs.

In summary, NMFS seeks public comment on whether there is a biological need for the proposed slippage cap, whether the trigger (10 slippage events for the entire mackerel fleet) for the proposed slippage cap has adequate justification, and whether the requirement to return to port would be inequitable. After evaluating public comment, NMFS will determine whether the proposed slippage cap can be approved. Even if the slippage cap must be disapproved, the ongoing data collection by NEFOP and the released catch affidavit requirement would still allow for improved monitoring in the mackerel fishery, increased information

regarding discards, and an incentive to minimize the discarding of unsampled catch.

Lastly, Amendment 14 proposes that a number of measures related to at-sea sampling could be modified through the specifications process, including: (1) The observer provisions to maximize sampling; (2) the industry contribution amount for at-sea observer coverage; (3) exceptions for the requirement to pump/haul aboard all fish from net for inspection by at-sea observers; and (4) trip termination requirements for mackerel vessels.

3. Measures To Address River Herring and Shad Interactions

River herring and shad are managed by the Atlantic States Marine Fisheries Commission (ASMFC) and individual states. According to the most recent ASMFC stock assessments for river herring (May 2012) and shad (August 2007), river herring and shad populations have declined from historic levels and many factors will need to be addressed to allow their recovery, including fishing (in both state and Federal waters), river passageways, water quality, predation, and climate change. In an effort to aid in the recovery of depleted or declining stocks, the ASMFC, in cooperation with individual states, prohibited state waters commercial and recreational fisheries that did not have approved sustainable fisheries management plans, effective January 1, 2012. NMFS recently completed a comprehensive review of the status of river herring (but not shad) in response to a petition submitted by the Natural Resources Defense Council requesting that we list alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*) as threatened under the Endangered Species Act throughout all or a significant portion of their range or as specific distinct population segments identified in the petition. Based on the best scientific and commercial information available, we determined that listing alewife as threatened or endangered under the ESA is not warranted at this time (August 12, 2013; 78 FR 48944).

Amendment 14 would establish a mortality cap on river herring and shad in the mackerel fishery, where the mackerel fishery would close once it has been determined to cause a certain amount of river herring and/or shad mortality. Based on the results of the ASMFC's assessments for river herring and shad, data do not appear to be robust enough to determine a biologically based catch cap for these species, and/or the potential effects on these populations if a catch cap is implemented on a coast-wide scale. Nevertheless, the Council believes that capping the allowed level of river herring and shad catch in the mackerel fishery would provide a strong incentive for the industry to avoid river herring and shad, and would help to minimize encounters with these species.

The likelihood of a mackerel closure related to the river herring and shad cap would depend on the value the Council proposes for the cap for a given year, the availability of mackerel for that year, and the realized incidental catch of river herring and shad for that year. The analysis presented in Amendment 14 estimated that total ocean fishing mortality (all gear types and fisheries) ranged from 244 to 672 mt for both river herring species (2006–2010), and 47 to 70 mt for both shad species (2007–2010). To qualitatively evaluate the biological and economic impacts of a river herring and/or shad cap, Amendment 14 presented an analysis in which the cap was set equal to 35 percent of total ocean fishing mortality for river herring, and 12 percent of total ocean fishing mortality for shad. These percentages correspond to the estimated amount of mid-water trawl mortality for these species in Quarter 1 of the fishing year, which largely encompasses mackerel fishing activity. The proposed mortality cap on river herring and shad would use a similar method to that used for the butterfish mortality cap in the longfin squid fishery, where the ratio of river herring and shad caught to total catch on observed hauls would be applied to all catch. The analysis in Amendment 14 applies this methodology to mimic low, medium, and high rates of river herring and shad encounters on mackerel trips. If the mackerel fishery had been able to harvest the entire 115,000-mt mackerel quota in any year from 2006 to 2010, a river herring cap equal to 35 percent of total river herring ocean catch would have resulted in closures of the mackerel fishery in 3 of the years if there were low river herring encounter rates, and all of the years if there were medium and high river herring encounter rates. Similarly, a shad cap equal to 12 percent of the total shad ocean catch would not have caused a closure of the mackerel fishery in any of the years if there were low shad encounter rates, but would have resulted in a closure in all of the years with medium and high shad encounter rates. The analysis concluded that, because river herring and shad catch vary substantially from year to year, the realized combination of these factors may cause an early closure of the mackerel fishery in some years, and in other years may not result in a closure at all.

While the concept of the cap and general methodology are analyzed in Amendment 14, the Council's proposal deferred the establishment of the actual cap amount and other logistical details of the cap (e.g., the closure threshold and post-closure possession limit) to the MSB specifications process for the 2014 fishing year. The process for 2014 MSB specifications began in May 2013 with a MSB Monitoring Committee meeting to develop technical recommendations on the cap level and any necessary management measures. At its June 2013 meeting, the Council selected a combined catch cap for river herring and shad of 236 mt, a closure threshold of 95 percent, and a post-closure incidental trip limit of 20,000 lb (9.07 mt). The Council is finalizing its analysis of these measures and will submit its final recommendation to NMFS shortly as part of the 2014 MSB specifications package. Because the details of the cap are being fully analyzed in a separate action, NMFS only requests comments in this rulemaking on the concept of using a catch cap in the mackerel fishery to limit encounters with river herring and shad. The public will be given the opportunity to comment on the actual proposed cap level and management measures related to the cap in the proposed rule for 2014 MSB specifications. Secretarial approval of both Amendment 14 and the 2014 MSB specifications are necessary for implementation of the river herring and shad caps in the mackerel fishery, which is targeted for the start of the 2014 fishing year (January 1, 2014).

The New England Fishery Management Council is also considering establishing a catch cap for river herring and shad in the Atlantic herring fishery in Framework 3 to the Atlantic Herring FMP. Due to the mixed nature of the herring and mackerel fisheries, especially during the period from January through April, the potential for the greatest river herring catch reduction would come from the implementation of a joint river herring catch and shad cap for both the fisheries. On May 23, 2013, the New England and Mid-Atlantic Councils' technical teams for the herring and mackerel fisheries met to begin development of the catch caps. In addition, at its June 2013 meeting, the New England Council discussed some details of the cap, including the possible division of the cap into areas to match the activity of the herring fishery by

season. The New England Council is working towards a target of implementing the cap in mid-2014.

Amendment 14 would establish a mechanism to develop, evaluate, and consider regulatory requirements for a river herring bycatch avoidance strategy in small-mesh pelagic fisheries. The river herring bycatch avoidance strategy would be developed and evaluated by the Council, in cooperation with participants in the mackerel fishery, specifically the Sustainable Fisheries Coalition (SFC); the Massachusetts Division of Marine Fisheries (MA DMF); and the University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST). This measure is based on the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring and shad bycatch by working within current fisheries management programs, without the need for additional regulatory requirements. The river herring bycatch avoidance program includes portside sampling, real-time communication with the SFC on river herring distribution and encounters in the herring fishery, and data collection to evaluate if oceanographic features may predict high rates of river herring encounters.

Amendment 14 would require that, within 6 months of completion of the existing SFC/MA DMF/SMAST river herring bycatch avoidance project, the Council would review and evaluate the results from the river herring bycatch avoidance project, and consider a framework adjustment to the MSB FMP to establish river herring bycatch avoidance measures. Measures that may be considered as part of the framework adjustment include: (1) Mechanisms to track herring fleet activity, report bycatch events, and notify the herring fleet of encounters with river herring; (2) the utility of test tows to determine the extent of river herring bycatch in a particular area; (3) the threshold for river herring bycatch that would trigger the need for vessels to be alerted and move out of a given area; and (4) the distance and/or time that vessels would be required to move from an area.

The Council considered other measures to address river herring and shad bycatch in Amendment 14, including closed areas. Because the seasonal and inter-annual distribution of river herring and shad is highly variable in time and space, the Council determined that the most effective measures in Amendment 14 to address river herring and shad bycatch would be those that increase monitoring, bycatch accounting, and promote cooperative efforts with the industry to minimize bycatch to the extent practicable. In order to streamline the regulatory process necessary to adjust the river herring and shad mortality caps, or enact time area management for river herring and shad, should scientific information to support such management measures become available, the Council proposed that Amendment 14 would add river herring and shad catch caps and time/area closures to the list of measures that can be addressed via framework adjustment.

4. Adding Individual River Herring and Shad Species as Stocks in the MSB Fishery

Initially, the Council considered alternatives in Amendment 14 intended to add, in a future action, alewife, blueback herring, American shad, and/or hickory shad as stocks in the MSB FMP. Instead, the Council decided that it would initiate a future Council amendment that would consider adding these as stocks in the fishery and analyze all of the MSA provisions (i.e., various management reference points, description and delineation of essential fish habitat (EFH), etc.), and initiated Amendment 15 to MSB FMP to explore the need for conservation and management of these species more thoroughly. Scoping for MSB Amendment 15 began in October 2012 (77 FR 65867), and the technical team for the MSB FMP is currently working to develop this action.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 14 to the MSB FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment and the concerns noted in the preamble.

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

The Council prepared a final environmental impact statement (FEIS) for Amendment 14. A notice of availability for the FEIS was published on August 16, 2013 (78 FR 50054). The FEIS describes the impacts of the proposed measures on the environment. Proposed revisions to fishery management program measures, including dealer and vessel reporting requirements and trip notification, are expected to improve catch monitoring in the MSB fisheries with positive biological impacts to the MSB fisheries and minimal negative economic impacts on human communities. Proposed increases to observer coverage requirements, measures to improve at-sea sampling by observers, and measures to minimize discarding of catch before it has been sampled by observers are also expected to improve catch monitoring and have positive biological impacts on the MSB fisheries. The economic impacts of these proposed measures on human communities are varied, but negative economic impacts may be substantial compared to the status quo. Proposed measures to address bycatch to the extent practicable are expected to have positive biological impacts and moderate negative impacts on human communities. Lastly, all proposed measures are expected to have positive biological impacts on non-target species and neutral impacts on habitat and protected resources.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from $4.0 to $19.0 million, Shellfish Fishing from $4.0 to $5.0 million, and Other Marine Fishing from $4.0 to $7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

The proposed measures in Amendment 14 could affect any vessel holding an active Federal permit to fish for Atlantic mackerel, longfin squid, *Illex* squid, or butterfish. All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines, because they have gross receipts that do not exceed $19 million annually. In 2012, 1,835 commercial vessels possessed Atlantic mackerel permits (132 limited access permits and 1,703 open access permits), 329 vessels possessed longfin squid/butterfish moratorium permits, 72 vessels possessed *Illex* permits, 1,578 vessels possessed incidental squid/butterfish permits, and 705 vessels possessed squid/mackerel/butterfish party/charter permits. Many vessels participate in more than one of these fisheries;

therefore, permit numbers are not additive.

Available data indicate that no single fishing entity earned more than $19 million annually. Although there are likely to be entities that, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data NMFS cannot apply the business size standard at this time. NMFS is currently compiling data on vessel ownership that should permit a more refined assessment and determination of the number of large and small entities for future actions. For this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. Therefore, there are no disproportionate economic impacts on small entities. Section 6.7 in Amendment 14 describes the vessels, key ports, and revenue information for the MSB fisheries; therefore, that information is not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance

Requirements

Minimizing Significant Economic Impacts on Small Entities

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the PRA. The new requirements, which are described in detail in this preamble, have been submitted to OMB for approval as a new collection.

Amendment 14 would increase VTR reporting submission frequency for all MSB permit holders from monthly to weekly. MSB permit holders currently submit 12 VTRs per year, so the additional cost of submitting VTRs on a weekly basis is $18. This cost was calculated by multiplying 40 (52 weeks in a year minus 12 (number of monthly reports)) by $0.46 to equal $18. The VTR is estimated to take 5 min to complete. Therefore the total annual burden estimate of weekly VTRs is $18, and 3 hr and 20 min.

This action proposes that limited access mackerel and longfin squid/butterfish moratorium permit holders purchase and maintain a VMS. Because other Northeast Federal permits require vessels to maintain a VMS, it is estimated that only 80 vessels do not already have a VMS. The average cost of purchasing and installing a VMS is $3,400, the VMS certification form takes an estimated 5 min to complete and costs $0.46 to mail, and the call to confirm a VMS unit takes an estimated 5 min to complete and costs $1. The average cost of maintaining a VMS is $600 per year. Northeast regulations require VMS activity declarations and automated polling of VMS units to collect position data. Each activity declaration takes an estimated 5 min to complete and costs $0.50 to transmit. If a longfin squid/butterfish moratorium permit holder takes 22 trips per year, the burden estimate for activity declarations would be 1 hr and 50 min, and $11. If a limited access mackerel permit holder takes 8 trips per year, the burden estimate for activity declarations would be 40 min and $4. Each automated polling transmission costs $0.06 and a vessel is polled once per hour every day of the year. The annual estimated cost associated with polling is $526. Vessels may request a power-down exemption to stop position transmission under certain provisions, as described in the preamble. The form to request a power down exemption letter takes 5 min to complete, and costs $0.46 to mail. If each vessel submits a power down exemption request 2 times a year, the total estimated burden is 10 min and $1. In summary, the total annual burden estimate for a vessel to purchase and maintain a VMS would be 2 hr 10 min and $4,540 for a longfin squid/butterfish moratorium permit holder, and 1 hr and $4,533 for a limited access mackerel permit holder.

Amendment 14 would require that limited access mackerel and longfin squid/butterfish moratorium permit holders submit daily VMS reports. The cost of transmitting a catch report via VMS is $0.60 per transmission, and it is estimated to take 5 min to complete. If a longfin squid/butterfish moratorium permit holder takes 22 trips per year and each trip lasts an average of 2 days, the burden estimate for activity declarations would be 1 hr and 50 min, and $14. If a limited access mackerel permit holder takes 8 trips per year and each trip lasts an average of 3 days, the burden estimate for activity declarations would be 40 min, and $5.

This action would require limited access mackerel vessels to submit a pre-landing notification to NMFS OLE via VMS 6 hr prior to landing. Each VMS pre-landing notification is estimated to take 5 min to complete and cost $1. Limited access mackerel permit holders are estimated to take 8 trip per year, so the total annual burden estimate is 40 min, and $8.

Amendment 14 would require MSB dealers to document, for each transaction, how they estimate the relative composition of catch, if catch is not sorted by species. This requirement would apply to all transactions with over 20,000 lb (9.07 mt) of mackerel, and all transactions with over 2,500 lb (1.13 mt) of longfin squid, and would be in addition to existing dealer reporting requirements. The additional reporting burden of documenting relative species composition of each of the above transactions is expected to take 5 min per transaction. In July 2013, there were 214 entities that held MSB permits. Dealers make an average of 1,700 mackerel or longfin squid transactions meeting the above descriptions per year. Therefore, the annual burden associated with documenting relative species composition for each MSB dealer is estimated to be 142 hr.

Amendment 14 would increase the reporting burden for measures designed to improve at-sea sampling by NMFS-approved observers. Limited access mackerel vessels would be required to notify NMFS to request an observer at least 48 hr prior to beginning a trip where they intend to land over 20,000 lb (9.07 mt) of mackerel. The phone call is estimated to take 5 min to complete and is free. If a vessel has already contacted NMFS to request an observer and then decides to cancel that fishing trip, Amendment 14 would require that vessel to notify NMFS of the trip cancellation. The call to notify NMFS of a cancelled trip is estimated to take 1 min and is free. If a vessel takes an estimated 8 trips per year, the total annual reporting burden associated with pre-trip observer notification would be 40 min.

Amendment 14 would require a released catch affidavit for limited access mackerel and longfin squid/butterfish moratorium permit holders that discard catch before it had been made available to an observer for sampling (slipped catch). The reporting burden for completion of the released catch affidavit is estimated to average 5 min. The cost associated with the affidavit is the postage to mail the form to NMFS ($0.46). The affidavit requirement would affect an estimated 312 longfin squid/butterfish moratorium permit holders, and 132 limited access mackerel permit holders. If the longfin squid/butterfish moratorium permit holders slipped catch once per trip with an observer aboard, and took an estimated 22 trips per year, the total annual reporting burden for the released catch affidavit would be 1 hr 50 min and $10. If the limited access mackerel permit holders slipped catch once per trip with an observer aboard, and took an estimated 8 trips per year, the total annual reporting burden for the released catch affidavit would be 40 min, and $4.

Amendment 14 would require 100-percent observer coverage on all limited access mackerel trips using mid-water trawl and Tier 1 trips using small-mesh bottom trawl; 50-percent coverage on Tier 2 mackerel trips using small-mesh bottom trawl; and 25-percent coverage on Tier 3 mackerel trips using small-mesh bottom trawl. There are an estimated 132 limited access mackerel permit holders that may use midwater trawl to target mackerel. Vessels go on an average of 6 midwater trawl trips per year and spend an average of 3 days at sea. If these permit-holders are responsible for paying for 100-percent of coverage on a total of 18 days at sea per year, the total annual estimated cost would be $5,850. There are an estimated 30 Tier 1 vessels that spend an average of 16 days at sea per year on small-mesh bottom trawl trips, and if these vessels were responsible for paying for 100 percent of the cost of coverage the total annual estimated cost would be $5,200. There are an estimated 23 Tier 2 vessels that spend an average of 16 days at sea per year on small-mesh bottom trawl mackerel trips, and if these vessels were responsible for paying for 50 percent of the cost of coverage, the total annual estimated cost would be $2,600. There are an estimated 79 Tier 3 vessels that spend an average of 16 days at sea per year on small-mesh bottom trawl mackerel trips, and if these vessels were responsible for paying for 25 percent of the cost of coverage, the total annual estimated cost would be $1,300.

Under the proposed industry-funded observer program, limited access mackerel permit holders would be required to contact an observer service provider to request an observer. An estimated 132 vessels would be subject to this requirement. If those vessels took an estimated 8 trips per year and the call to the observer service provider took an estimated 10 min to complete and cost $1, the annual reporting burden of the proposed notification requirement is estimated to be 1 hr 20 min, and $8. If an observer service provider had no observer available, limited access mackerel permit holders would be required to notify NMFS to request an observer waiver. The likelihood of an observer not being available is anticipated to be low. Therefore, if on two occasions the vessels needed to contact NMFS to request a waiver, and the call took an estimated 5 min to complete and was free, the annual reporting burden to request a waiver is estimated to be 10 min.

NMFS expects that additional observer service providers may apply for certification under the observer certification procedures found at § 648.11(h). NMFS estimates that three additional providers may apply for certification. In addition, existing providers, and the three potential additional providers, would be required to submit additional reports and information required of observer service providers as part of their certification. NMFS expects that six providers would be subject to these new requirements. Observer service providers must comply with the following requirements, submitted via email, fax, or postal service: Submit applications for approval as an observer service provider; formally request observer training by NEFOP; submit observer deployment reports and biological samples; give notification of whether a vessel must carry an observer within 24 hr of the vessel owner's notification of a prospective trip; maintain an updated contact list of all observers that includes the observer identification number; observer's name mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and whether or not the observer is "in service." The regulations would also require observer service providers to submit any outreach materials, such as informational pamphlets, payment notification, and descriptions of observer duties, as well as all contracts between the service provider and entities requiring observer services for review to NMFS. Observer service providers also have the option to respond to application denials, and submit a rebuttal in response to a pending removal from the list of approved observer providers. NMFS expects that all of these reporting requirements combined are expected to take 1,734 hr of response time per year, for a total annual cost of $25,363 for the affected observer providers. The following table provides the detailed time and cost information for each response item.

Observer provider requirements	Number of entities	Total Number of items	Time (hours) per response	Total time burden (hours)	Cost per response	Annual cost
Observer deployment report by email	6	1,500	0.167	251	$0	$0
Observer availability report by email	6	900	0.167	150	0	0
Safety refusals by email	6	150	0.5	75	0	0
Raw observer data by express mail	6	1,500	0.083	125	13	19,500
Observer debriefing	6	420	2	840	12	5,040
Other reports	6	210	0.5	105	0	0
Biological samples	6	1,500	0.083	125	0.50	750
New application to be a service provider	3	3	10	30	0.44	1
Applicant response to denial	1	1	10	10	0	0
Request for observer training	3	6	0.5	3	1.80	11
Rebuttal of pending removal from list of approved observer providers	1	1	8	8	0	0
Observer contact list updates	3	36	0.083	3	0	0
Observer availability updates	3	36	0.017	1	0	0
Service provider material submissions	6	12	0.5	6	2.50	30
Service provider contracts	6	12	0.5	6	2.50	30
Total				1,736		25,363

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the

collection of information to the Regional Administrator (see **ADDRESSES**), and email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The Council prepared an IRFA, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov*.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

1. Adjustments to the Fishery Management Program

Amendment 14 proposes to revise several existing fishery management provisions, including VTR and VMS requirements, and dealer reporting requirements, to better administer the MSB fisheries. The proposed action (Alternative 1c in the FEIS) would require all MSB permit holders to submit VTRs on a weekly basis. The no action (alternative 1a) would have maintained monthly reporting requirements for all MSB permit holders, and two additional alternatives would have instituted weekly reporting for just mackerel permit holders (alternative 1bMack) or longfin squid/butterfish permit holders (alternative 1bLong). Weekly VTRs would cost an additional $18 per year compared to status quo, but any permit holders already submit weekly VTRs related to other Northeast Region permits. The proposed action could improve data for quota monitoring, and bring VTR requirements in line with those for other Northeast Region permits.

The proposed action requires VMS for limited access mackerel and longfin squid/butterfish moratorium permit holders (alternatives 1eMack and 1eLong), requires trip declarations and daily VMS catch reports for these permit holders (alternatives 1fMack and 1fLong), and requires a pre-landing notifications via VMS in order to land more than 20,000 lb (9.07 mt) of mackerel (alternative 1gMack). The no action alternative (alternative 1a) would not impose VMS requirements for these permit holders. As with the VTR requirements, many limited access mackerel and longfin squid/butterfish moratorium permit holders already have VMS related to other Northeast Region permits. For permit holders obtaining a new VMS, the proposed VMS requirements would cost roughly $4,500 for the first year of operation. The FEIS for Amendment 14 discussed that the economic impacts of these reporting requirements is mixed compared to status quo. While short-term operating costs for these fishing vessels is increased compared to status quo, these measures may have long-term positive impacts if they result in less uncertainty and, ultimately, additional harvest being made available to MSB fishery participants.

Amendment 14 would require that MSB dealers weigh all landings related to mackerel transactions over 20,000 lb (9.07 mt) (alternative 2d), and all longfin squid transactions over 2,500 lb (1.13 mt) (alternative 2f), and if these transactions were not sorted by species, would be required to document, with each transaction, how they estimated the relative composition of catch. Dealers would be permitted to use volume-to-weight conversions if they were not able to weigh landings (alternative 2g). Dealers currently report the weight of fish, obtained by scale weights and/or volumetric estimates. Because the proposed action does not specify how fish are to be weighed, the proposed action is not anticipated to change dealer behavior, and, therefore, is expected to have neutral impacts in comparison to the no action alternative. Amendment 14 considered four alternatives to the proposed action: The no action alternative; and alternatives 2b, 2c and 2e. Alternative 2b would require that a vessel confirm MSB dealer reports for mackerel landings over 20,000 lb (9.07 mt), *Illex* squid landings over 10,000 lb (4.53 mt), and longfin squid landings over 2,500 lb (1.13 mt). Alternatives 2c and 2e are similar to the proposed alternative in that they would require dealers to weigh all landings related to mackerel transactions over 20,000 lb (9.07 mt) (alternative 2c), and all longfin squid transactions over 2,500 lb (1.13 mt) (alternative 2e), but would have required that relative species composition be documented annually instead of at each transaction. Overall, relative to the no action alternative, the proposed action and Alternatives 2c and 2e may have low negative impacts on dealers due to the regulatory burden of documenting how species composition is estimated. In comparison, Alternative 2b may have a low positive impact on fishery participants, despite an increased regulatory burden, if it minimizes any lost revenue due to data errors in the dealer reports and/or the tracking of MSB catch.

2. Adjustments to At-Sea Catch Monitoring

Amendment 14 would require a 48-hr pre-trip notification for all vessels intending to retain, possess or transfer 20,000 lb (9.07 mt) or more of Atlantic mackerel in order to facilitate observer placement (alternative 1d48). In addition to the no action alternative (alternative 1a), Amendment 14 also considered requiring a 72-hr pre-trip notification requirement (alternative 1d72). Compared to the no action alternative, both action alternatives may mean that fishermen are not able to embark on fishing trips on short notice, especially if they are selected to take an observer. The proposed alternative would, however, improve observer placement compared to the no action alternative.

Amendment 14 recommends increases in the observer coverage in the mackerel fishery, specifically 100-percent observer coverage on all (Tiers 1, 2 and 3) midwater mackerel trawl vessels (alternative 5b4) and Tier 1 small-mesh bottom trawl mackerel vessels, 50-percent coverage on Tier 2 small-mesh bottom trawl mackerel vessels, and 25-percent on Tier 3 small-mesh bottom trawl mackerel vessels (alternative 5c4), with an industry contribution of $325 per day (alternative 5f). Amendment 14 considers four alternatives to the proposed coverage level recommendations: The no action alternative (alternative 5a); 25-percent (alternative 5b1), 50-percent (alternative 5b2), and 75-percent (alternative 5b3) coverage levels for all (Tiers 1, 2 and 3) mid-water trawl mackerel vessels; 25-percent (alternative 5c1), 50-percent (alternative 5c2), and 75-percent (alternative 5c3) coverage levels for all (Tiers 1, 2 and 3) small-mesh bottom trawl mackerel vessels; and coverage levels necessary to achieve target coefficients of variation for river herring bycatch using midwater trawl gear (alternatives 5e1 and 5e2) and small-mesh bottom trawl gear (5e3 and 5e4). Additionally, Amendment 14 considered a phased-in industry funding option (5g) that would shift the cost of the at-sea portion of observer coverage from NMFS to the industry over a 4-yr period. The specific coverage levels under the no action alternative and the 5e alternatives are unknown at

this time, because they would depend on an analysis of fishery data from previous years, but coverage levels under these alternatives are expected to be less than 100 percent. Compared to the no action alternative, the proposed $325 contribution per day would increase daily trip costs by 9 percent for single midwater trawl mackerel vessels, and 12 percent for paired midwater trawl mackerel vessels, and 20 percent for small-mesh bottom trawl vessels. In general, higher coverage levels, which would result in higher increases in daily costs for fishery participants, would have a negative economic impact on fishery participants, potentially resulting in less effort and lower catch. In the long-term, increased monitoring and improved data collections for the mackerel fishery may translate to improved management of the mackerel fishery that would benefit fishery-related businesses and communities.

Amendment 14 would require limited access mackerel and longfin squid/butterfish moratorium permit holders to bring all catch aboard the vessel and make it available for sampling by an observer (alternative 3j). Catch slipped before being sampled by an observer would count against a slippage cap and require that a released catch affidavit be completed. If a slippage cap is reached, a vessel would be required to return to port immediately following any additional slippage events (alternative 3l). Amendment 14 considered the no action alternative, and nine other alternatives to the proposed action. The no action alternative would not establish slippage prohibitions, released catch affidavit requirements, slippage caps, or trip termination requirements. The other non-selected alternatives include various elements of the proposed action, including a requirement for mackerel and longfin squid permit holders to complete a released catch affidavit (alternative 3e), a requirement to prohibit mackerel (alternative 3f) and longfin squid (alternative 3g) permit holders from releasing discards before they are bought aboard for sampling, trip termination requirements after 1 (alternative 3h), 2 (alternative 3i), 5 (alternative 3k), or 10 (alternative 3n) fleet-wide slipped hauls on mackerel or longfin squid vessels carrying observers, individual slippage caps resulting in trip termination (alternative 3p), and a requirement that vessels that terminate a trip would have to take observers on the immediate subsequent trip (alternative 3o).

Negative impacts associated with all of these alternatives include increased time spent pumping fish aboard the vessel to be sampled by an observer, potential decrease in vessel safety during poor operating conditions, and the administrative burden of completing a released catch affidavit. The penalties associated with slippage vary slightly across the alternatives. The overall impacts of the options that propose trip termination (proposed action) are negative in comparison to the no action alternative. Costs associated with mackerel and longfin squid fishing trips are high, particularly with the current cost of fuel. Trips terminated prematurely could result in unprofitable trips, leaving not only the owners with debt, but crewmembers without income, and negative impacts on fishery-related businesses and communities.

3. Measures To Address River Herring and Shad Interactions

Amendment 14 would establish catch caps for river herring (alternative 6b) and shad (alternative 6c) in the mackerel fishery. Two alternatives, the proposed action and the no action, were considered. Compared to the no action alternative, the action alternatives have the possibility of resulting in a closure of the directed mackerel fishery before the mackerel quota is reached. This could result in revenue losses as high as $15 million based on 2010 ex-vessel prices, depending on how early the fishery is closed. While there is no direct linkage between river herring and shad catch and stock status, a closure that results from a catch cap in the mackerel fishery could limit the fisheries mortality on these stocks.

The proposed action also includes support for the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring bycatch with real-time information on river herring distribution and mackerel fishery encounters. This aspect of the proposed action has the potential to mitigate some of the negative impacts of the proposed action by developing river herring bycatch avoidance measures in cooperation with the fishing industry.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 23, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.2, the definition of "Slippage in the Atlantic mackerel and longfin squid fisheries" is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Slippage in the Atlantic mackerel and longfin squid fisheries means catch that is discarded prior to being brought aboard a vessel issued an Atlantic mackerel or longfin squid permit and/or prior to making the catch available for sampling and inspection by a NMFS-approved observer. Slippage includes catch released from a codend or seine prior to the completion of pumping catch aboard and catch released from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and that remain in the net at the end of pumping operations are not considered slippage. Discards that occur at sea after the catch is brought on board and sorted are also not considered slippage.

* * * * *

■ 3. In § 648.7, paragraphs (a)(1)(iv), (b)(3)(ii), and (b)(3)(iii) are added, and paragraph (f)(2)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(iv) *Dealer reporting requirements for Atlantic mackerel and longfin squid.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers issued an MSB dealer permit must accurately weigh all fish or use volume-to-weight conversions for all transactions containing more than 2,500 lb (1.13 mt) of longfin squid or 20,000 lb (9.07 mt) of mackerel. If dealers do not sort by species, dealers are required to document, for each report submitted, how the species composition of the catch is determined.

* * * * *

(b) * * *

(3) * * *

(ii) *Atlantic mackerel owners or operators.* The owner or operator of a vessel issued a limited access mackerel permit must report catch (retained and discarded) of mackerel daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other information required by the

Regional Administrator: Fishing Vessel Trip Report serial number; month and day mackerel was caught; total pounds of mackerel retained and total pounds of all fish retained. Daily mackerel VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if mackerel caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(iii) *Longfin squid/butterfish moratorium permit owners or operators.* The owner or operator of a vessel issued a longfin squid/butterfish moratorium permit must report catch (retained and discarded) of longfin squid daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day longfin squid was caught; total pounds longfin squid retained and total pounds of all fish retained. Daily longfin squid VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if longfin squid caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

(f) * * *

(2) * * *

(i) For any vessel not issued a NE multispecies; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. If such a vessel makes no fishing trip during a particular month, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies permit; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If such a vessel makes no fishing trip during a reporting week, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month the VTR must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies permit; Atlantic herring permit; or Atlantic mackerel, longfin squid, *Illex* squid or butterfish permit; begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (i.e., a "did not fish" report) would not be required for either earlier week.

* * * * *

■ 4. In § 648.10, paragraphs (b)(9), (b)(10), (m), and (n) are added to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(9) Vessels issued a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit; or

(10) Vessels issued a longfin squid/butterfish moratorium permit.

* * * * *

(m) *Limited access Atlantic mackerel VMS notification requirements.* (1) A vessel issued a limited access Atlantic mackerel permit intending to declare into the mackerel fishery must notify NMFS by declaring a mackerel trip prior to leaving port at the start of each trip in order to harvest, possess, or land mackerel on that trip.

(2) A vessel issued a limited access Atlantic mackerel permit intending to land more than 20,000 lb (9.07 mt) of mackerel must notify NMFS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on its return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication in the **Federal Register** consistent with the Administrative Procedure Act.

(n) *Longfin squid/butterfish VMS notification requirements.* A vessel issued a longfin squid/butterfish moratorium permit intending to declare into the longfin squid fishery must notify NMFS by declaring a longfin squid trip prior to leaving port at the start of each trip in order to harvest, possess, or land longfin squid on that trip.

■ 5. In § 648.11, paragraphs (h)(1), (h)(3)(vi), (h)(3)(ix), (h)(4)(i) through (iii), (h)(5)(i), (h)(5)(ii)(B) and (C), (h)(5)(iii), (h)(5)(vi), (h)(5)(viii)(A), (h)(7), (i)(2), and (i)(3)(ii) are revised, and paragraph (m) is added to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(h) * * *

(1) *General.* An entity seeking to provide observer services to the Atlantic sea scallop or Atlantic mackerel fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St. Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop or Atlantic mackerel vessel owners and shall be posted on NMFS's Web page, as specified in paragraph (g)(4) of this section.

* * * * *

(3) * * *

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop or Atlantic mackerel fishery observer services provider as set out in paragraph (h)(5) of this section, and the arrangements to be used.

* * * * *

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop or Atlantic mackerel High Volume Fisheries Certification Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

* * * * *

(4) * * *

(i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop or Atlantic mackerel fishery observer service provider, as demonstrated in the

application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS' Web site specified in paragraph (g)(4) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop or Atlantic mackerel fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop or Atlantic mackerel fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

* * * * *

(5) * * *

(i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop or Atlantic mackerel fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop or Atlantic mackerel fishery, unless the observer service provider does not have an available observer within 24 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified in paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified.

* * * * *

(ii) * * *

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop or Atlantic mackerel vessel or to attend a NMFS/NEFOP Sea Scallop or Atlantic mackerel High Volume Fisheries Certification Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS' Web site specified in paragraph (g)(4) of this section under the Sea Scallop and Atlantic mackerel Observer Program, prior to any deployment and/or prior to NMFS observer certification training: and

* * * * *

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop or Atlantic mackerel fishery.

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop or Atlantic mackerel High Volume Fisheries Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

* * * * *

(viii) * * *

(A) An observer service provider may refuse to deploy an observer on a requesting scallop or Atlantic mackerel vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a scallop vessel or within 48 hr of receiving a request for an observer from an Atlantic mackerel vessel.

* * * * *

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop or Atlantic mackerel trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer

service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

* * * * *

(i) * * *

(2) *Observer training.* In order to be deployed on any Atlantic mackerel vessel, a candidate observer must have passed a NMFS/NEFOP or Atlantic mackerel High Volume Fisheries Certification/Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop or Atlantic mackerel vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) * * *

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop or Atlantic mackerel vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

* * * * *

(m) *Atlantic mackerel, squid, and butterfish observer coverage*—(1) *Pre-trip notification.* (i) A vessel issued a limited access Atlantic mackerel permit or longfin squid/butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or email address for contact; and the date, time, port of departure, gear type (for mackerel trips), and approximate trip duration, at least 48 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (m)(1)(iii) of this section.

(ii) A vessel that has a representative provide notification to NMFS as described in paragraph (a) of this section may only embark on a mackerel or longfin squid trip without an observer if a vessel representative has been notified by NMFS that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specified mackerel or longfin squid trip, within 24 hr of the vessel representative's notification of the prospective mackerel or longfin squid trip, as specified in paragraph (a) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the mackerel or longfin squid trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing mackerel or longfin squid except as specified in paragraph (c) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(iii) *Trip limits.* (A) A vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing more than 2,500 lb (1.13 mt) of longfin squid per trip at any time, and may only land longfin squid once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) A vessel issued a limited access mackerel permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing more than 20,000 lb (9.07 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iv) If a vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land more than 2,500 lb (1.13 mt) of longfin squid per trip or per calendar day, or a vessel issued a limited access Atlantic mackerel permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land more than 20,000 lb (9.07 mt) of mackerel per trip or per calendar day, and has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or email address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

(2) *Sampling requirements for limited access Atlantic mackerel and longfin squid/butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or longfin squid/butterfish moratorium permit on which a NMFS-approved observer is embarked must provide observers:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(3) *Measures to address slippage in the Atlantic mackerel and longfin squid fisheries.* (i) No vessel issued a limited access Atlantic mackerel permit or a longfin squid/butterfish moratorium permit and carrying a NMFS-approved observer may release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought on board the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure precludes bringing some or all of the catch on board the vessel for sampling and inspection; or

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish that can be pumped from the net prior to release.

(ii) If fish are released prior to being brought on board the vessel, including catch released due to any of the exceptions in paragraphs (m)(3)(i)(A)–(C) of this section, the vessel operator must complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board (if only part of the tow was released) or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(4) *At-sea observer coverage requirements for the Atlantic mackerel fishery.* (i) Vessels issued a limited access Atlantic mackerel permit may not fish for, take, retain, possess, or land Atlantic mackerel without carrying a NMFS-approved observer, unless the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of this observer requirement for that trip pursuant to paragraph (m)(4)(iv) of this section.

(ii) An owner, operator, or manager of a vessel required to carry an observer under paragraph (m)(4)(i) of this section must arrange for carrying an observer certified through the Atlantic Mackerel High Volume Fisheries observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 24 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at *http://www.nefsc.noaa.gov/femad/fsb/*.

(iii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 24 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available.

(iv) NMFS/NEFOP shall issue such a waiver within 12 hr if the conditions of paragraph (m)(4) of this section are met. A vessel may not begin the trip without being issued a waiver. All waivers for observer coverage will be issued to the vessel by VMS so a vessel must have on board a verification of the waiver.

(v) When selected to carry an observer on a declared mackerel trip, owners of vessels issued a limited access Atlantic mackerel permit must pay observer service providers $325 per sea day.

■ 6. In § 648.14, paragraphs (g)(2)(v) through (viii) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(2) * * *

(v) *Reporting requirements in the limited access Atlantic mackerel and longfin squid/butterfish moratorium fisheries.* (A) Fail to declare via VMS into the mackerel or longfin squid/butterfish fisheries by entering the fishery code prior to leaving port at the start of each trip to harvest, possess, or land Atlantic mackerel or longfin squid, if a vessel has been issued a Limited Access Atlantic mackerel permit or longfin squid/butterfish moratorium permit, pursuant to § 648.10.

(B) Fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least of 6 hr prior to landing, if a vessel has been issued a Limited Access Atlantic mackerel permit, pursuant to § 648.10.

(vi) Release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions defined at § 648.11(m)(3) if issued a Limited Access Atlantic mackerel permit, or a longfin squid/butterfish moratorium permit.

(vii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the requirements at § 648.11(m)(3).

(viii) Fail to immediately return to port after slipping catch while carrying a NMFS-approved observer after NMFS has determined that the slippage cap has been reached, pursuant to § 648.24.

* * * * *

■ 7. In § 648.22, paragraphs (b)(2)(vi) and (b)(4) are added to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

* * * * *

(b) * * *

(2) * * *

(vi) *River herring and shad catch cap.* The Monitoring Committee shall provide recommendations regarding a cap on the catch of river herring (alewife and blueback) and shad (American and hickory) in the Atlantic mackerel fishery based on best available scientific information, as well as measures (seasonal or regional quotas, closure thresholds) necessary for implementation.

* * * * *

(4) *Additional measures.* The Monitoring Committee may also provide recommendations on the following items, if necessary:

(i) Observer provisions to maximize sampling at § 648.11(m)(2);

(ii) Industry contribution amount for at-sea observer coverage at § 648.11(m)(2);

(iii) Exceptions for the requirement to pump/haul aboard all fish from net for inspection by at-sea observers in § 648.11(n)(2);

(iv) Trip termination requirements after slippage for mackerel vessels in § 648.24(b)(7).

* * * * *

■ 8. In § 648.24, paragraph (b)(7) is added to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(7) *Slippage caps.* If NMFS determines that there have been 10 slippage events by vessels issued limited access Atlantic mackerel permits and carrying NMFS-approved observers, vessels with limited access mackerel permits that subsequently slip catch while carrying a NMFS-approved observer must immediately stop fishing and return to port after each slippage event. NMFS shall implement these restrictions in accordance with the Administrative Procedure Act.

* * * * *

■ 9. In § 648.25, paragraph (a)(1) is revised to read as follows:

§ 648.25 Atlantic mackerel, squid and butterfish framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The

MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions, recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; any other management measures currently included in the FMP, set aside quota for scientific research, regional management; process for inseason adjustment to the annual specification; mortality caps for river herring and shad species; time/area management for river herring and shad species; and provisions for river herring and shad incidental catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting incidental catch events, compiling data, and notifying the fleet of changes to the area(s); the definition/duration of 'test tows,' if test tows would be utilized to determine the extent of river herring incidental catch in a particular area(s); the threshold for river herring incidental catch that would trigger the need for vessels to be alerted and move out of the area(s); the distance that vessels would be required to move from the area(s); and the time that vessels would be required to remain out of the area(s). Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

* * * * *

§ 648.27 [Removed]

■ 10. Remove § 648.27.

[FR Doc. 2013–21052 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BC39

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 95 to the Fishery Management Plan for Groundfish

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

ACTION: Notification of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the North Pacific Fishery Management Council has submitted Amendment 95 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for review by the Secretary of Commerce. If approved, Amendment 95 would modify the FMP to: establish halibut prohibited species catch (PSC) limits for the Gulf of Alaska (GOA) in Federal regulation; reduce the GOA halibut PSC limits for trawl and hook-and-line gear; reduce trawl halibut PSC sideboard limits for American Fisheries Act, Amendment 80, and Central GOA Rockfish Program vessels; and provide two additional management measures associated with halibut PSC accounting for Amendment 80 vessels subject to halibut PSC sideboards and for halibut PSC made by trawl vessels from May 15 through June 30, which would maintain groundfish harvest while achieving the halibut PSC limit reductions intended by this action. This action is necessary to reduce halibut bycatch in the GOA, and is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments on Amendment 95 must be received on or before October 28, 2013.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2012–0151, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0151* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

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

Electronic copies of Amendment 95 to the FMP, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA), prepared for this action are available from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Baker or Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register**

announcing that the amendment is available for public review and comment. This document announces that proposed Amendment 95 to the FMP is available for public review and comment.

The groundfish fisheries in the exclusive economic zone of Alaska are managed under the GOA FMP and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. These fishery management plans were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act.

Proposed Amendment 95 would improve management of halibut bycatch, commonly known as halibut PSC, in the GOA. Amendment 95 would (1) Establish halibut PSC limits for the GOA in Federal regulation; (2) reduce the GOA halibut PSC limits for trawl and hook-and-line gear; (3) proportionately reduce trawl halibut PSC sideboard limits for American Fisheries Act (AFA), Amendment 80, and Central GOA Rockfish Program vessels; and (4) modify management measures for halibut PSC sideboard limits for Amendment 80 vessels and for halibut PSC used by trawl vessels from May 15 through June 30. This proposed action is necessary to reduce halibut PSC limits in the GOA groundfish fisheries and to ensure long-term conservation and abundance of halibut for all users.

Recent declines in halibut exploitable biomass, particularly in the GOA, have exacerbated concerns about the amount of halibut PSC taken by the groundfish fisheries because of the potential effect it has on directed commercial, charter, unguided, and subsistence halibut fisheries. Amendment 95 recognizes that the dynamics of the directed and non-directed halibut fisheries have changed significantly since halibut PSC limits were first established. The halibut PSC limit for the GOA trawl has been maintained at, or very near, 2,000 mt since 1989. The 300 mt halibut PSC limit for the non-trawl fisheries has remained unchanged since 1995.

Since the existing GOA halibut PSC limits were established, there have been changes in groundfish and halibut management programs and fishing patterns, environmental conditions, fishing technology, and knowledge of halibut and groundfish stocks. The total biomass and abundance of halibut has varied, and in recent years the stock is experiencing an ongoing decline in size for all ages in all areas. This proposed action is meant to reduce halibut PSC limits to the extent practicable, while at the same time allowing for optimum yield in the GOA groundfish fishery.

Amendment 95 would provide for the establishment of GOA halibut PSC limits in Federal regulation. These limits would be reduced from the current halibut PSC levels for trawl and hook-and-line gear as follows:

- 7 percent reduction for hook-and-line catcher/processors;
- 15 percent reduction phased-in over 3 years for hook-and-line catcher vessels (7 percent the first year, an additional 5 percent the second year, and the final 3 percent the third year);
- 1 metric ton reduction for the hook-and-line demersal shelf rockfish southeast outside district; and
- 15 percent reduction phased-in over 3 years for trawl (7 percent the first year, an additional 5 percent the second year, and the final 3 percent the third year).

Seasonal and gear apportionments of halibut PSC limits would continue to be set through the annual GOA groundfish harvest specifications process. Section 679.21(d)(5) authorizes NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The GOA FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

Amendment 95 would provide the trawl and hook-and-line catcher vessel groundfish fleets additional time to individually and collectively adapt to the reduced halibut PSC limits of this proposed action by phasing-in the halibut PSC limits for the trawl and hook-and-line catcher vessel gears with the largest reductions.

Amendment 95 would also maintain the process used to establish annual halibut PSC limits that are applicable to three trawl catch share programs. A variety of halibut PSC use limits, commonly known as sideboard limits, have been implemented to limit the amount of halibut PSC available to specific participants in GOA groundfish fisheries. Sideboard limits serve as fishery-specific limits that require participants subject to the sideboard limit to stop fishing for specific groundfish once that sideboard limit is reached. Sideboard limits were adopted as part of the AFA, Amendment 80, and Central GOA Rockfish catch share programs to prevent program participants from using the flexibility provided by catch share allocations to increase their harvests in fisheries not subject to exclusive allocations. Additional detail on the rationale and calculation for specific sideboard limits in these catch share programs is available in the final rules implementing these catch share programs and is not repeated here (for the AFA see 67 FR 79692, December 30, 2002; for the Amendment 80 Program see 72 FR 52668, September 14, 2007; and for the Central GOA Rockfish Program, see 76 FR 81248, December 27, 2011). This action proposes to reduce the annual trawl PSC limit, which would result in a proportional decrease the halibut PSC sideboard limit apportioned to each of the above three programs.

Finally, Amendment 95 would implement two management measures to current halibut PSC management to mitigate the effects of the proposed halibut PSC reductions. These options would (1) allow the Amendment 80 sector to roll-over unused halibut PSC limits from one season to the subsequent season, and (2) combine management of available trawl halibut PSC limits in the second season deep-water and shallow-water fisheries to be made available for use in either of these fisheries from May 15 through June 30.

Proposed Amendment 95 also replaces all occurrences of the word "bycatch" in the GOA FMP with "PSC" where bycatch actually refers to halibut PSC. This recommended change would clarify the type of bycatch that is referred to in the GOA FMP.

The EA/RIR/IRFA prepared for this action describes the cost and benefits of the halibut PSC reductions, which would be published in Federal regulation as a result of proposed Amendment 95 (see **ADDRESSES** for availability). Groundfish harvesters may or may not be constrained by this proposed action, depending on the amount of halibut PSC limit that remains available throughout the year. A reduction in harvest by those directly regulated entities constrained by this action would impact revenue generated from the GOA groundfish fisheries.

Public comments are being solicited on proposed Amendment 95 to the GOA FMP through the end of the comment period (see **DATES**). NMFS intends to publish this action in the **Federal Register** and seek public comment on a

proposed rule that would implement Amendment 95, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period for Amendment 95 to be considered in the approval/disapproval decision on Amendment 95. All comments received by the end of the comment period on Amendment 95, whether specifically directed to the GOA FMP amendment or the proposed rule will be considered in the FMP approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: August 23, 2013.

Kelly Denit,

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

[FR Doc. 2013–21068 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 168
Thursday, August 29, 2013

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0005]

Notice of Request for Revision to and Reinstatement of an Expired Information Collection; Bees and Related Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and reinstatement of an expired information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and reinstatement of an expired information collection associated with the regulations for the importation of bees and related articles into the United States.

DATES: We will consider all comments that we receive on or before October 28, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2013–0005–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0005, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2013–0005* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of bees and related articles, contact Dr. Colin Stewart, Senior Entomologist, Pest Permit Evaluations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2038, email: *Colin.D.Stewart@aphis.usda.gov.* For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Bees and Related Articles.

OMB Number: 0579–0207.

Type of Request: Revision to and reinstatement of an expired information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States.

Under the Honeybee Act (7 U.S.C. 281–286), the Secretary is authorized to prohibit or restrict the importation of honeybees and honeybee semen to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species such as the African honey bee. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture.

The establishment of certain bee diseases, parasites, or undesirable species and subspecies of honeybees in the United States could cause substantial reductions in pollination by bees. These reductions could cause serious damage to crops and other plants and result in substantial financial losses to American agriculture.

Regulations for the importation of honeybees and honeybee semen and regulations to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping products, and used beekeeping equipment are contained in 7 CFR part 322, "Bees, Beekeeping Byproducts, and Beekeeping Equipment." These regulations require the use of certain information collection activities, including an application for a permit, appeal for withdrawal of a permit, request for risk assessment, transit documentation, packaging and labeling, recordkeeping for containment facilities, and notices of arrival for shipments from approved regions, transit shipments, and restricted articles.

The listed information collection activities were previously approved by the Office of Management and Budget (OMB). However, since the previous approval, there have been several changes. We no longer require the use of an export certificate (Plant Protection and Quarantine Form 578). In addition, the estimated total annual burden on respondents has decreased from 567 hours to 56 hours due to the removal of Australia as a participating country. There is also a decrease in the estimated annual number of respondents from 336 to 199 due to the removal of Australia and duplication of respondents on two of the required documents.

We are asking OMB to approve our use of these information collection activities, as described, for 3 years.

The purpose of this notice is to solicit comments from the public (as well as agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.155 hours per response.

Respondents: Importers, exporters, and shippers of bees and related

articles; foreign governments; and containment facilities.

Estimated annual number of respondents: 199.

Estimated annual number of responses per respondent: 1.814.

Estimated annual number of responses: 361.

Estimated total annual burden on respondents: 56 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 23rd day of August 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–21131 Filed 8–28–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability Under the Intermediary Relending Program

AGENCIES: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service announces that the funds available under the Intermediary Relending Program (IRP) to provide direct loans to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area. Total funding available for fiscal year 2013 is $17,420,358.93 which includes $1,524,631.71 for Rural Economic Area Partnership (REAP) Zone loans, $2,590,602.37 for Native American loans and $5,756,894.50 for Mississippi Delta Region Counties loans.

SUPPLEMENTARY INFORMATION: A Notice of Solicitation of Applications for Inviting Intermediary Relending Program Applications was published on Monday, April 8, 2013 (78 FR 20883–6).

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform*. Similarly, all applicants must be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov*. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html*, or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov*.

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: August 13, 2013.

Lillian E. Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2013–21058 Filed 8–28–13; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Section 538 Guaranteed Rural Rental Housing Program for Fiscal Year 2013

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; amendment.

SUMMARY: The Rural Housing Service (RHS) is amending a Notice published May 23, 2013 (78 FR 30854–30860). This action is taken to extend the eligible properties to include Rural Development financed Farm Labor Housing properties. This amendment is to ensure that all eligible properties are included.

Correction

In the **Federal Register** May 23, 2013, in FR Doc. 2013–12325, on page 30857, the first column, first paragraph, is amended to read as follows:

Also eligible is the revitalization, repair and transfer (as stipulated in 7 CFR 3560.406) of existing direct Section 515 and Section 514/516 Farm Labor Housing (FLH) (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205), and properties involved in the Agency's Multi-Family Preservation and Revitalization (MPR) program. Equity payment, as stipulated in 7 CFR 3560.406, in the transfer of existing direct Section 515 and Section 514/516 FLH, is an eligible use of guaranteed loan proceeds; however, the amount of funding available for transfers of existing Section 515 and Section 514/516 FLH properties involving equity payments will be limited to 25 percent of the FY 2013 funding level through July 31, 2013

* * *

On page 30858, under the heading "Data element" the 18th data element is amended to read Revitalization, Repair, and Transfer (as stipulated in 7 CFR 3560.406) of Existing Direct Section 515 and Section 514/516 FLH or MPR.

On page 30859, in the third column, under the heading "Priority 6" is amended to read: Responses for the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 and section 514/516 FLH and properties * * *

On page 30859, in the third column, under the heading "Priority 7" is amended to read: Section 515 Rural Rental Housing and Section 514/516 FLH Projects—Projects in which Section 538 funds will not be used to finance new construction of Section 515 Rural Rental Housing or Section 514/516 FLH projects * * *

Dated: August 20, 2013.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2013–21059 Filed 8–28–13; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the United States Commission on Civil Rights (the Commission), and the Federal Advisory Committee Act (FACA), that an orientation meeting and planning meeting of the New Jersey State Advisory Committee to the Commission (the Committee) will be held at the Office of the Chancellor, Rutgers the State University, Center for Law and Justice, 123 Washington Street, Suite 590, Newark, New Jersey 07102. The meetings will convene at 10:00 a.m. (ET) on Monday, September 23, 2013. The purpose of the orientation meeting is to inform the newly appointed Committee members about the rules of operation of federal advisory committees and to select additional officers, as determined by the Committee. The purpose of the planning meeting is to discuss the findings and recommendations of the Committee's draft report on the accommodations made by New Jersey Department of Corrections to prisoners with non-apparent disabilities. If time permits, the Committee will also begin discussing potential topics that the Committee may study and report to the Commission.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Tuesday, October 22, 2013. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue NW., Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov*.

Persons needing accessibility services should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated: August 26, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–21119 Filed 8–28–13; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the United States Commission on Civil Rights (the Commission), and the Federal Advisory Committee Act (FACA), that an orientation meeting and planning meeting of the West Virginia State Advisory Committee to the Commission (the Committee) will be held at the WorkForce West Virginia Conference Room in the WorkForce West Virginia Building, 1321 Plaza East, Charleston, WV 25301. The meetings will convene at 11:00 a.m. (Eastern Time) on Tuesday, September 17, 2013. The purpose of the orientation meeting is to inform the newly appointed Committee members about the rules of operation of federal advisory committees and to select additional officers, as determined by the Committee. The purpose of the planning meeting is to discuss potential topics that the Committee may wish to select as the civil rights project it plans to study and on which it will report to the Commission.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Wednesday, October 16, 2013. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue NW., Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov*.

Persons needing accessibility services should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated: August 26, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–21120 Filed 8–28–13; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Florida Advisory Committee (Committee) will convene on Wednesday, September 18, 2013. The meeting will convene at 1:30 p.m. and adjourn at approximately 3:30 p.m. The meeting will be held at the InterContinental Hotel, 100 Chopin Plaza, Miami, Florida 33131. The purpose of the meeting is to discuss the Committee's previous work on voting rights and plan future activities on the issue.

Members of the public are entitled to submit written comments. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth St. SW., Suite 16T126, Atlanta, GA, 30303. Comments may also be faxed to the Commission at (404) 562–7005, or emailed to the Commission at *pminarik@usccr.gov*. Comments must be received by October 18, 2013. Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Southern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated August 26, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–21121 Filed 8–28–13; 8:45 am]

BILLING CODE 6335–01–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: Papahānaumokuākea Marine National Monument Permit Applications and Reports for Permits.

OMB Control Number: 0648–0548.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 192.

Average Hours per Response: Permits applications range from 5 to 10 hours, depending on purpose; entry and exit notices and vessel monitoring system certification, 5 minutes each.

Burden Hours: 1,343.

Needs and Uses: On June 15, 2006, President Bush established the Papahānaumokuākea Marine National Monument by issuing Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act (16 U.S.C. 431). The proclamation includes restrictions and prohibitions regarding activities in the monument consistent with the authority provided by the act. Specifically, the proclamation prohibits access to the monument except when passing through without interruption or as allowed under a permit issued by NOAA and the U.S. Fish and Wildlife Service (FWS/Dept. of the Interior). Vessels passing through the monument without interruption are required to notify NOAA and FWS upon entering into and leaving the monument. Individuals wishing to access the monument to conduct certain regulated activities must first apply for and be granted a permit issued by NOAA and FWS to certify compliance with vessel monitoring system requirements, monument regulations and best management practices. On August 29, 2006, NOAA and FWS published a final rule codifying the provisions of the proclamation (71 FR 51134).

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

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: August 23, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–21034 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2012

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

ACTION: Notice of Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2012.

SUMMARY: The National Oceanic and Atmospheric Administration's (NOAA's) Damage Assessment, Remediation, and Restoration Program (DARRP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2012. The indirect cost rates for this fiscal year and date of implementation are provided in this notice. More information on these rates and the DARRP policy can be found at the DARRP Web site at *www.darrp.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: LaTonya Burgess at 301–713–4248, ext. 211, by fax at 301–713–4389, or email at *LaTonya.Burgess@noaa.gov.*

SUPPLEMENTARY INFORMATION: The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*) and the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and to support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARRP consists of three component organizations: the Office of Response and Restoration (ORR) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel Natural Resources Section (GCNRS). The DARRP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with federal accounting requirements, the DARRP is required to account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARRP's Indirect Cost Effort

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: evaluate the DARRP cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARRP. A **Federal Register** notice on R&M's effort, their assessment of the DARRP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARRP Web site at *www.darrp.noaa.gov.*

R&M continued its assessment of DARRP's indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARRP indirect rates for FYs 2000 and

2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARRP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARRP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARRP component organizations are consistent with federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARRP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars, plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from I.M. Systems Group (IMSG) were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. IMSG provided on-site support to the DARRP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. IMSG continues to provide on-site support to the DARRP. Starting in FY 2010, contractors from Genwest provide on-site support for cost documentation. Subsequent federal notices have been published in the **Federal Register** as follows:

- FY 2002, published on October 6, 2003 (68 FR 57672)
- FY 2003, published on May 20, 2005 (70 FR 29280)
- FY 2004, published on March 16, 2006 (71 FR 13356)
- FY 2005, published on February 9, 2007 (72 FR 6221)
- FY 2006, published on June 3, 2008 (73 FR 31679)
- FY 2007 and FY 2008, published on November 16, 2009 (74 FR 58948)
- FY 2009 and FY 2010, published on October 20, 2011 (76 FR 65182)
- FY 2011, published on September 17, 2012 (77 FR 57074)

Cotton's reports on these indirect rates can also be found on the DARRP Web site at *www.darrp.noaa.gov*.

Cotton reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2012 indirect cost rates.

The DARRP's Indirect Cost Rates and Policies

The DARRP will apply the indirect cost rates for FY 2012 as recommended by Cotton for each of the DARRP component organizations as provided in the following table:

DARRP component organization	FY 2012 indirect rate (percent)
Office of Response and Restoration (ORR)	117.18
Restoration Center (RC)	59.80
General Counsel Natural Resources Section (GCNRS)	21.48

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2012 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2011 and September 30, 2012. DARRP will use the FY 2012 indirect cost rates for future fiscal years, beginning with FY 2013, until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

Dated: August 13, 2013.

David Westerholm,

Director, Office of Response and Restoration.

[FR Doc. 2013–21127 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–DE–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1912]

Expansion of Foreign-Trade Zone 84; Houston, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board for authority to expand FTZ 84 to include a site in Brazos County, Texas, adjacent to the Houston Customs and Border Protection port of entry (B–10–2013, docketed 1/31/2013);

Whereas, notice inviting public comment has been given in the **Federal Register** (78 FR 8492–8493, 2/6/2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied if subject to specific conditions;

Now, therefore, the Board hereby orders:

The application to expand FTZ 84 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit, and further subject to sunset provisions that would terminate authority on August 31, 2018, for Sites 2, 3, 5, 12, 14, 23 and 26 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this August 23, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–21153 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board Charter Renewal

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Chief Financial Officer and Assistant Secretary of Commerce for Administration, with the concurrence of the General Services Administration, renewed the Charter for the United States Travel and Tourism Advisory Board on August 19, 2013.

DATES: The Charter for the United States Travel and Tourism Advisory Board was renewed on August 19, 2013.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *jennifer.pilat@trade.gov.*

SUPPLEMENTARY INFORMATION: The Chief Financial Officer and Assistant Secretary of Commerce for Administration, with the concurrence of the General Services Administration, renewed the United States Travel and Tourism Advisory Board on August 19, 2013. This Notice is published in accordance with the Federal Advisory Committee Act (FACA) (Title 5, United States Code, Appendix 2, § 9). It has been determined that the Committee is necessary and in the public interest. The Committee was established pursuant to Commerce's authority under 15 U.S.C. 1512, established under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., and with the concurrence of the General Services Administration. The Committee provides advice to the Secretary on government policies and programs that affect the U.S. travel and tourism industry, including the implementation of the National Travel and Tourism Strategy.

Dated: August 26. 2013.

Jennifer Pilat,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2013–21111 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda for an open meeting of the United States Travel and Tourism Advisory Board (Board). The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

DATES: September 17, 2013, 1:30 p.m.–4:30 p.m. Eastern Daylight Time (EDT).

ADDRESSES: U.S. Department of Commerce, Room 4830, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *jennifer.pilat@trade.gov.*

SUPPLEMENTARY INFORMATION:

Agenda: At the meeting, the Board will hear updates from its four subcommittees on travel facilitation, business climate, infrastructure and sustainability, and advocacy, and discuss and deliberate on proposed recommendations addressing advocacy, art investment and public-private partnerships. The Board will also hear updates from representatives of the U.S. government on past recommendations, the implementation of the National Travel and Tourism Strategy and the progress on implementing the President's Executive Order 13597 on travel and tourism. The agenda may change to accommodate Board business. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://tinet.ita.doc.gov/TTAB/TTAB_Home.html*, at least one week in advance of the meeting.

Background: The Board is a Federal advisory committee that advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry, including government policies and programs that affect the U.S. travel and tourism industry, and serves as a forum for discussing and proposing solutions to industry-related problems.

Public Participation: The meeting will be open to the public and will be physically accessible to people with disabilities. All guests are required to register in advance. Seating is limited and will be on a first-come, first-served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than 5 p.m. EDT on September 10, 2013 to Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW, Washington, DC 20230, telephone 202–482–4501, *OACIE@trade.gov*. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on September 10, 2013, to ensure transmission to the Board prior to the meeting.

Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: August 23, 2013.

Jennifer Pilat,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2013–21113 Filed 8–28–13; 8:45 am]

BILLING CODE 3510–DR–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Notice of Availability of the Determination for Eligibility for Listing on the Historic Register

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing this notice to advise the public that, on July 24, 2013, the CFPB prepared and submitted a recommendation to the State Historical Preservation Office for eligibility for listing on the historic register for the building located at 1700 G Street, NW., Washington, DC. The building is currently used as the headquarters for the Consumer Financial Protection Bureau (CFPB). Originally built in 1976, the building has three below ground levels that extend beneath a large public courtyard (two of which include secured parking) and seven floors above ground with the highest reserved for mechanical equipment. Storefront retail is located at the ground level. The CFPB and its consultants prepared the final Determination for Eligibility for Listing on the Historic Register, dated July 24, 2013, in accordance with the provisions of § 106 of the National Historic Preservation Act.,

DATES: Comments must be received no later than 25 September 2013. The Determination for Eligibility for Listing on the Historic Register is available as of the publication date of this notice.

ADDRESSES: Interested parties may request copies of the Determination for

Eligibility for Listing on the Historic Register from: Consumer Financial Protection Bureau, Facilities Office—Projects, 1700 G Street NW., Washington, DC, 20552. You may submit comments by any of the following methods:

- *Electronic: michael.davis@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Michael Davis, Project Manager, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael Davis, Project Manager, Office of Administrative Operations, at (202) 435–9405.

SUPPLEMENTARY INFORMATION: The office building at 1700 G Street, NW., currently occupied by the Consumer Financial Protection Bureau (CFPB), was originally designed by Max Urbahn Associates (now Urbahn Architects) and constructed between 1974–1977. The building is immediately west and north of the Winder Building, which is listed in the National Register of Historic Places (NRHP). To address the potential individual eligibility of this property, CFPB representatives and their consultants consulted key resources as part of a background review to put this building within a historic, social, architectural, and landscape context. This included the General Services Administration (GSA) study Growth, Efficiency, and Modernism: GSA Buildings of the 50s, 60s, and 70s (Robinson & Associates 2005), which provides an in-depth historical context on federal buildings of the Modern era, several newspaper and journal articles on file with the CFPB, books on the development and architecture of Washington, DC, interviews, and historic maps. To assess the building's potential eligibility, resources such as the previously mentioned GSA study, the American Institute of Architects Guide to Architecture of Washington, DC, and the Society of Architectural Historian's Buildings of the District of Columbia were consulted for a context of other buildings in the area. Fieldwork was conducted on June 25 and July 11, 2013. The building was evaluated for architectural significance as well as historic and physical integrity. This resource was documented through written notes and digital photography. The information obtained during the survey was then used to create the DOE form and make recommendations on the property's NRHP potential.

Dated: August 21, 2013.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2013–20897 Filed 8–28–13; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0069]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Application for Department of Defense Access Card—Defense Biometric Identification System (DBIDS) Enrollment; OMB Control Number 0704–0455.

Type of Request: Revision.

Number of Respondents: 2,429,096.

Responses per Respondent: 1.

Annual Responses: 2,429,096.

Average Burden per Response: 7 minutes.

Annual Burden Hours: 283,395 hours.

Needs and Uses: This information collection requirement is needed to obtain the necessary data to verify eligibility for a Department of Defense physical access card for personnel who are not entitled to a Common Access Card or other approved DoD identification card. The information is used to establish eligibility for the physical access to a DoD installation or facility, detect fraudulent identification cards, provide physical access and population demographic reports, provide law enforcement data, and in some cases provide anti-terrorism screening.

Affected Public: Individuals or households.

Frequency: On occasion.

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

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: August 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–21047 Filed 8–28–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0185]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Department of Defense Child Development Program (CDP); DD 2652, DD 2606, and X656; OMB Control Number 0704–TBD.

Type of Request: New Collection.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 1667 hours.

Needs and Uses: For the DD Forms 2606 and 2652, customer information is utilized for program planning and management purposes. Respondents include non-federal customers (generally contractors) enrolling their children in the DoD CDP. For the DD Form X656, respondents include non-federal applicants for employment.

Affected Public: Individuals or households.

Frequency: On occasion.

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

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. You may also submit comments, identified by docket number and title, by the following method:

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

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

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: August 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–21051 Filed 8–28–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Docket ID DoD–2013–OS–0184]

Proposed Information Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 28, 2013.

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

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Services-Cleveland, 1240 East 9th Street, Cleveland, OH 44199, ATTN: Mr. Charles Moss, *charles.moss@dfas.mil,* 216–204–4426.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Custodianship Certification to Support Claims on Behalf of Minor Children of Deceased Members of the Armed Forces, DD Form 2790, OMB 0730–0010.

Needs and Uses: Per DoD Financial Management Regulation, 7000.14–R, Volume 7B, Chapter 46, paragraph 460103A(1), an annuity for a minor child is paid to the legal guardian, or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The child then is considered an adult for annuity purposes and a custodian or legal fiduciary is not required.

Affected Public: Individuals or households.

Annual Burden Hours: 120 hours.

Number of Respondents: 300.

Responses per respondent: 1.

Average Burden per Response: 24 minutes.

Frequency: On occasion.

Summary of Information Collection

The form is used by the Directorate of Retired and Annuity Pay, Defense Finance and Accounting Service—Cleveland, in order to pay the annuity to the correct person on behalf of a child under the age of majority. If the form, with the completed certification is not received, the annuity payments are suspended.

Dated: August 21, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20770 Filed 8–28–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Response Systems to Adult Sexual Assault Crimes Panel (Response Systems Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense (DoD) announces the following federal advisory committee meeting.

ADDRESSES: U.S. District Court for the District of Columbia, 333 Constitution Avenue NW., Courtroom # 20, 6th Floor, Washington, DC 20001.

DATES: A meeting of the Response Systems to Adult Sexual Assault Crimes Panel (hereafter referred to as "the Response Systems Panel") will be held September 24–25, 2013. The Public Session will begin at 9:30 a.m. and end at 4:40 p.m. on September 24, 2013, and will begin at 8:55 a.m. and end at 5:00 p.m. on September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Saunders, Deputy Staff Director, Response Systems Panel, One Liberty Center, 875 N. Randolph Street, Arlington, VA 22203. Email: *terri.a.saunders.civ@mail.mil.* Phone: (703) 696–8990.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* At this meeting, the Panel will deliberate on the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), Section 576(a)(1) requirement to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses under section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), for the purpose of developing recommendations regarding how to improve the effectiveness of such systems. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to this tasking.

Agenda: The Panel will conduct Administrative Sessions on September 24, 2013 from 9:00 a.m. to 9:30 a.m. and from 4:40 p.m. to 5:00 p.m. to address administrative matters. Additionally, the Panel will conduct an Administrative Session on September 25, 2013 from 8:30 a.m. to 8:55 a.m. Pursuant to 41 CFR 102–3.160, the public may not attend the Administrative Sessions.

Tentative Agenda:

- Role of the Commander in the Military Justice Process Overview.
- Allied Forces Military Justice Systems Overview.
- Commander and Staff Judge Advocate Perspective.
- Senior Service Judge Advocate Perspective.
- Receipt of public comments.

Availability of Materials for the Meeting: A copy of the updated agenda for the September 24–25, 2013 meeting, as well as other materials presented in the meeting, may be obtained at the meeting or from the Panel's Deputy Staff Director at *terri.a.saunders.civ@mail.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, part of this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Deputy Staff Director at terri.a.saunders.civ@mail.mil at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by the Deputy Staff Director at least five (5) business days prior to the meeting date so that they may be made available to the Panel for their consideration prior to the meeting. Written comments should be submitted via email to the address for the Deputy Staff Director given in this notice in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted as above along with a request to provide an oral statement. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during the open portion of this meeting. Determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and relevance to the Committee's activities. Five minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted between 4:10 p.m. and 4:40 p.m. on September 24 and between 4:45 p.m. and 5:00 p.m. on September 25, 2013, in front of the Panel. The number of oral presentations to be made will depend on the number of requests received from members of the public.

Committee's Designated Federal Officer: The Board's Designated Federal Officer is Ms. Maria Fried, Response Systems to Adult Sexual Assault Crimes Panel, 1600 Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: August 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–21056 Filed 8–28–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11:00 a.m. to 12:00 p.m. on September 30, 2013, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on September 30, 2013, from 8:30 a.m. to 11:00 a.m. The closed session of this meeting will be the executive session held from 11:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the Library of Congress in Washington, DC The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Matt Cady, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on September 30, 2013, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial

punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade, and personnel issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters coming under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Dated: August 23, 2013

L.R. Almand,

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

[FR Doc. 2013–21083 Filed 8–28–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0033]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 30, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0033 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report.

OMB Control Number: 1840–0640.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 158.

Total Estimated Number of Annual Burden Hours: 1,738.

Abstract: Ronald E. McNair Postbaccalaureate Achievement (McNair) Program Annual Performance Report Program grantees must submit the report annually. The reports are used to evaluate grantees' performance for substantial progress, GPRA, and to award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the projects and to analyze the impact of the McNair Program on the academic progress of participating students.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–21072 Filed 8–28–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.268]

Annual Notice of Interest Rates of Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program Prior to July 1, 2013

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: In accordance with section 455(b)(9) of the Higher Education Act of 1965, as amended, the Chief Operating Officer for Federal Student Aid announces the interest rates for the period July 1, 2013, through June 30, 2014, for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program prior to July 1, 2013. The Chief Operating Officer takes this action to give notice of Direct Loan interest rates to the public.

DATES: This notice is effective August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, 830 First Street NE., Room 114I1, Washington, DC 20202. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)), provides formulas for determining the interest rates charged to borrowers for loans made under the Direct Loan Program including: Federal Direct Subsidized Stafford Loans (Direct Subsidized Loans); Federal Direct Unsubsidized Stafford Loans (Direct Unsubsidized Loans); Federal Direct PLUS Loans (Direct PLUS Loans); and

Federal Direct Consolidation Loans (Direct Consolidation Loans).

The Direct Loan Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the Direct Loan Program before July 1, 2006, have variable interest rates that change each year. In most cases, the variable interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year.

Under section 455(b) of the HEA, Direct Loans first disbursed on or after July 1, 2006, have a fixed interest rate.

In the case of some Direct Consolidation Loans, the interest rate is determined by the date on which the Direct Consolidation Loan application was received. Direct Consolidation Loans for which the application was received on or after February 1, 1999, have a fixed interest rate. This fixed rate is based on the weighted average of the loans that are consolidated, rounded up to the nearest higher 1/8 of one percent up to a maximum rate of 8.25 percent.

Under section 455(b) of the HEA, the Direct Loan variable interest rates are based on formulas that use the bond equivalent rates of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage. These formulas apply to: All Direct Subsidized Loans and Direct Unsubsidized Loans; Direct Consolidation Loans for which the application was received on or after July 1, 1998, and before February 1, 1999; and Direct PLUS Loans disbursed on or after July 1, 1998. In each case, the calculated rate is capped by a maximum interest rate. The bond equivalent rate of the 91-day Treasury bills auctioned on May 28, 2013, which is used to calculate the interest rates on these loans, is 0.046 percent, which is rounded to 0.05 percent.

In addition, under section 455(b)(4) of the HEA, the interest rate for Direct PLUS Loans that were first disbursed on or after July 1, 1994, and before July 1, 1998, is based on the weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System on the last day of the calendar week ending on or before June 26 of each year, plus a statutory add-on percentage. The calculated rate is capped by a maximum interest rate. The weekly average of the one-year constant maturity Treasury yield published on June 21, 2013, which is used to calculate the interest rate on these loans, is 0.13 percent.

This notice includes five charts containing specific information on the calculation of the interest rates for loans made under the Direct Loan Program prior to July 1, 2013. We publish a separate notice containing the interest rates for Direct Loans made for the current award year.

Chart 1 contains information on the interest rates for variable-rate Direct Subsidized and Direct Unsubsidized Loans.

Chart 2 contains information on the interest rates for variable-rate Direct PLUS Loans.

Chart 3 contains information on the interest rates for variable-rate Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans.

Chart 4 contains information on the interest rates for variable-rate Direct PLUS Consolidation Loans.

Chart 5 contains information on the interest rates for fixed-rate Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, and Direct Consolidation Loans.

CHART 1—VARIABLE-RATE DIRECT SUBSIDIZED AND DIRECT UNSUBSIDIZED LOANS

Cohort		Max. rate (percent)	Index rate (percent)	Margin (percent)		Total rate (percent)	
First disbursed on or after	First disbursed before		91-Day T-bill rate	In-school, grace, deferment	All other periods	In-school, grace, deferment	All other periods
7/1/1994	7/1/1995	8.25	0.05	3.10	3.10	3.15	3.15
7/1/1995	7/1/1998	8.25	0.05	2.50	3.10	2.55	3.15
7/1/1998	10/1/2006	8.25	0.05	1.70	2.30	1.75	2.35

CHART 2—VARIABLE-RATE DIRECT PLUS LOANS

Cohort		Max. rate (percent)	Index rate (percent)		Margin (percent)	Total rate (percent)
First disbursed on or after	First disbursed before		91-day T-bill rate	1-Year constant treasury maturity		
7/1/1994	7/1/1998	9.00		0.13	3.10	3.23
7/1/1998	10/1/2006	8.25	0.05		3.10	3.15

In Charts 3 through 5, an asterisk following a date in a cohort field indicates that the trigger for the rate to apply is an application for a Direct Consolidation Loan being received either "on or after" or "before" the date in the cohort field. For example, the fourth row in Chart 3 describes the interest rate for Direct Subsidized and Unsubsidized Consolidation Loans for which the application was received before October 1, 1998, and that were first disbursed on or after October 1, 1998.

CHART 3—VARIABLE-RATE DIRECT SUBSIDIZED AND DIRECT UNSUBSIDIZED CONSOLIDATION LOANS

Cohort		Max. rate (percent)	Index rate (percent)	Margin (percent)		Total rate (percent)	
First disbursed on or after	First disbursed before		91-day T-bill rate (percent)	In-school, grace, deferment	All other periods	In-school, grace, deferment	All other periods
7/1/1994	7/1/1995	8.25	0.05	3.10	3.10	3.15	3.15
7/1/1995	7/1/1998	8.25	0.05	2.50	3.10	2.55	3.15
7/1/1998	10/1/1998	8.25	0.05	1.70	2.30	1.75	2.35
10/1/1998	*10/1/1998	8.25	0.05	1.70	2.30	1.75	2.35
10/1/1998*	*2/1/1999	8.25	0.05	2.30	2.30	2.35	2.35

CHART 4—VARIABLE-RATE DIRECT PLUS CONSOLIDATION LOANS

Cohort		Max. rate (percent)	Index rate (percent)		Margin (percent)		Total rate (percent)	
First disbursed on or after	First disbursed before		91-day T-bill rate	1-Year constant treasury maturity	In-school, grace, deferment	All other periods	In-school, grace, deferment	All other periods
7/1/1994	7/1/1998	9.00		0.13	3.10	3.10	3.23	3.23
7/1/1998	10/1/1998	9.00	0.05		3.10	3.10	3.15	3.15
10/1/1998	*10/1/1998	9.00	0.05		3.10	3.10	3.15	3.15
10/1/1998*	*2/1/1999	8.25	0.05		2.30	2.30	2.35	2.35

CHART 5—FIXED-RATE DIRECT SUBSIDIZED, DIRECT UNSUBSIDIZED, DIRECT PLUS LOANS, AND DIRECT CONSOLIDATION LOANS

Loan type	Student grade level	First disbursed on or after	First disbursed before	Rate (percent)
Subsidized	Undergraduates	7/1/2006	7/1/2008	6.80
Subsidized	Undergraduates	7/1/2008	7/1/2009	6.00
Subsidized	Undergraduates	7/1/2009	7/1/2010	5.60
Subsidized	Undergraduates	7/1/2010	7/1/2011	4.50
Subsidized	Undergraduates	7/1/2011	7/1/2013	3.40
Subsidized	Graduate/Professional Students	7/1/2006	7/1/2012	6.80
Unsubsidized	All	7/1/2006	7/1/2013	6.80
PLUS	Parents and Graduate/Professionals.	7/1/2006	7/1/2013	7.90
Consolidation	All	2/1/1999	7/1/2013	Weighted average of rates on the loans included in the consolidation, rounded to ⅛ of 1 percent, up to 8.25 percent.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1087 et seq.

Dated: August 26, 2013.

James F. Manning,

Chief of Staff of Federal Student Aid, delegated the authority to perform the functions and duties of the Chief Operating Officer of Federal Student Aid.

[FR Doc. 2013–21144 Filed 8–28–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.032]

Annual Notice of Interest Rates of Federal Student Loans Made Under the Federal Family Education Loan Program Prior to July 1, 2010

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: In accordance with section 427A of the Higher Education Act of 1965, as amended, the Chief Operating Officer for Federal Student Aid announces the interest rates for the period July 1, 2013, through June 30, 2014, for certain loans made under the Federal Family Education Loan (FFEL)

Program prior to July 1, 2010. The Chief Operating Officer takes this action to give notice of FFEL Program loan interest rates to the public.

DATES: This notice is effective August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, 830 First Street NE., Room 114I1, Washington, DC 20202. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Section 427A of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1077a), provides formulas for determining the interest rates charged to borrowers on loans made under the Federal Family Education Loan (FFEL) Program, including Federal Subsidized and Unsubsidized Stafford Loans, Federal PLUS Loans, and Federal Consolidation Loans.

The FFEL Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the FFEL Program before July 1, 2006, have variable interest rates that change each year. In most cases, the variable interest rate formula that applies to a particular loan usually depends on the date of the first disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year.

Under section 427A(k) of the HEA, FFEL Program loans first disbursed on or after July 1, 2006, have a fixed interest rate.

In the case of some Federal Consolidation Loans, the interest rate is determined by the date on which the Federal Consolidation Loan application was received. Federal Consolidation Loans for which the application was received on or after October 1, 1998, have a fixed interest rate. This fixed rate is based on the weighted average of the loans that are consolidated, rounded up to the nearest higher 1/8 of one percent up to a maximum rate of 8.25 percent.

FFEL variable interest rates are based on formulas that use the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year plus a statutorily established add-on. These formulas apply to: All Federal Subsidized and Unsubsidized Stafford Loans first disbursed before October 1, 1992, that have been converted to variable rate loans; all Federal Subsidized and Unsubsidized Stafford Loans first disbursed on or after October 1, 1992, and before July 1, 2006; Federal PLUS Loans first disbursed on or after July 1, 1998, and before July 1, 2006; and Federal Consolidation Loans for which the Federal Consolidation Loan application was received on or after November 13, 1997, and before October 1, 1998. In each case, the calculated rate is capped by a maximum interest rate. The bond equivalent rate of the 91-day Treasury bills auctioned on May 28, 2013, which is used to calculate the interest rates on these loans, is 0.046 percent, which is rounded to 0.05 percent.

For Federal PLUS loans first disbursed before July 1, 1998, the interest rate is based on the weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System on the last day of the calendar week ending on or before June 26 of each year, plus a statutory add-on percentage. The calculated rate is capped by a maximum interest rate. The weekly average of the one-year constant maturity Treasury yield published on June 21, 2013, which is used to calculate the interest rate on these loans, is 0.13 percent.

This notice includes five charts containing specific information on the calculation of interest rates for loans made under the FFEL Program:

Chart 1 contains information on the interest rates for Federal Subsidized and Unsubsidized Stafford Loans that were made as fixed-rate loans, but were subsequently converted to variable-rate loans.

Chart 2 contains information on the interest rates for variable-rate Federal Subsidized and Unsubsidized Stafford Loans.

Chart 3 contains information on the interest rates for variable-rate Federal PLUS Loans.

Chart 4 contains information on the interest rates for fixed-rate Federal Consolidation Loans.

Chart 5 contains information on the interest rates for fixed-rate Federal Subsidized and Unsubsidized Stafford and PLUS Loans.

CHART 1—"CONVERTED" VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS

Cohort		Original fixed interest rate (percent)	Max. rate (percent)	91-Day T-Bill rate (percent)	Margin (percent)	Total rate (percent)
First disbursed on or after	First disbursed before					
7/1/1988	7/23/1992	8.00, increasing to 10.00	10.00	0.05	3.25	3.30
7/23/1992	10/1/1992	8.00, increasing to 10.00	10.00	0.05	3.25	3.30
7/23/1992	7/1/1994	7.00	7.00	0.05	3.10	3.15
7/23/1992	7/1/1994	8.00	8.00	0.05	3.10	3.15
7/23/1992	7/1/1994	9.00	9.00	0.05	3.10	3.15
7/23/1992	7/1/1994	8.00, increasing to 10.00	10.00	0.05	3.10	3.15

Note: The FFEL Program loans represented by the second row of the chart were only made to "new borrowers" on or after July 23, 1992. Whether the FFEL Program loans represented by the third through sixth rows of the chart were made to a specific borrower depends on the interest rate on a borrower's existing loans at the time that the borrower received the loans between July 23, 1992 and prior to July 1, 1994.

In Charts 2 and 3, a dagger following a date in a cohort field indicates that the trigger for the rate to apply is a period of enrollment for which the loan was intended either "ending before" or "beginning on or after" the date in the cohort field.

CHART 2—VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS

Cohort		Max. rate (percent)	91-Day T-Bill rate (percent)	Margin (percent)		Total Rate (percent)	
First disbursed on or after	First disbursed before			In-school, grace, deferment	All other periods	In-school, grace, deferment	All other periods
10/1/1992	7/1/1994	9.00	0.05	3.10	3.10	3.15	3.15
7/1/1994	†7/1/1994	9.00	0.05	3.10	3.10	3.15	3.15
7/1/1994	7/1/1995	8.25	0.05	3.10	3.10	3.15	3.15
7/1/1995	7/1/1998	8.25	0.05	2.50	3.10	2.55	3.15
7/1/1998	7/1/2006	8.25	0.05	1.70	2.30	1.75	2.35

Note: The FFEL Program loans represented in the first row in Chart 2 were only made to "new borrowers" on or after October 1, 1992. The FFEL Program loans represented in the second row in Chart 2 were only made to "new borrowers" on or after July 1, 1994. The FFEL Program loans represented in the third row in Chart 2 must—in addition to having been first disbursed on or after July 1, 1994, and before July 1, 1995—have been made for a period of enrollment that began on or included July 1, 1994.

In Charts 3 and 4, an asterisk following a date in a cohort field indicates that the relevant trigger is an application for a Federal Consolidation Loan being received either "on or after" or "before" the date in the cohort field. For example, the sixth row in Chart 3 describes the interest rate for a Federal Consolidation Loan for which the application was received on or after November 13, 1997, but before October 1, 1998.

CHART 3—VARIABLE-RATE FEDERAL PLUS, SLS, AND CONSOLIDATION LOANS

Loan type	Cohort		Max. rate (percent)	Index rate (percent)		Margin (percent)	Total rate (percent)
	First disbursed on or after	First disbursed before		91-Day T-Bill rate	1-Year constant treasury maturity		
PLUS and SLS		10/1/1992	12.00		0.13	3.25	3.38
SLS	10/1/1992	†7/1/1994	11.00		0.13	3.10	3.23
PLUS	10/1/1992	7/1/1994	10.00		0.13	3.10	3.23
PLUS	7/1/1994	7/1/1998	9.00		0.13	3.10	3.23
PLUS	7/1/1998	7/1/2006	9.00	0.05		3.10	3.15
Consolidation	*11/13/1997	*10/1/1998	8.25	0.05		3.10	3.15
HHS Portion of Consolidation				0.05		3.00	3.05

The last row in Chart 3 refers to portions of Federal Consolidation Loans attributable to loans made by the U.S. Department of Health and Human Services under subpart I of part A of title VII of the Public Health Service Act.

CHART 4—FIXED-RATE CONSOLIDATION LOANS

First disbursed on or after	First disbursed before	Max. rate (percent)	Rate
	7/1/1994		Weighted average of rates on the loans included in the consolidation, rounded to nearest whole percent, but not less than 9.00%.
7/1/1994	*11/13/1997		Weighted average of rates on the loans included in the consolidation, rounded upward to nearest whole percent.
10/1/1998	7/1/2010	8.25	Weighted average of rates on the loans included in the consolidation, rounded to the nearest higher 1/8 of 1 percent.

CHART 5—FIXED-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD AND PLUS LOANS

Loan type	Student grade level	First disbursed on or after	First disbursed before	Rate (percent)
Subsidized	Undergraduate Students	7/1/2006	7/1/2008	6.80
Subsidized	Undergraduate Students	7/1/2008	7/1/2009	6.00
Subsidized	Undergraduate Students	7/1/2009	7/1/2010	5.60
Subsidized	Graduate/Professional Students	7/1/2006	7/1/2010	6.80

CHART 5—FIXED-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD AND PLUS LOANS—Continued

Loan type	Student grade level	First disbursed on or after	First disbursed before	Rate (percent)
Unsubsidized	All Students	7/1/2006	7/1/2010	6.80
PLUS	Parents and Graduate/Professional Students	7/1/2006	7/1/2010	8.50

Note: No new loans have been made under the FFEL Program since June 30, 2010.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1071 et seq.

Dated: August 26, 2013.

James F. Manning,

Chief of Staff of Federal Student Aid, delegated the authority to perform the functions and duties of the Chief Operating Officer of Federal Student Aid.

[FR Doc. 2013–21142 Filed 8–28–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Financial Assistance Information Collection, OMB Control Number 1910–0400. This information collection request covers information necessary to administer and manage DOE's financial assistance programs.

DATES: Comments regarding this collection must be received on or before September 30, 2013. If you anticipate difficulty in submitting comments within that period or if you want access to the collection of information, without charge, contact the person listed below as soon as possible.

ADDRESSES: Written comments should be sent to the following: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard Bonnell by email at *richard.bonnell@hq.doe.gov*. Please put "2013 DOE Agency Information Collection Extension" in the subject line when sending an email.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–0400 (Renewal); (2) *Information Collection Request Title:* DOE Financial Assistance Information Clearance; (3) *Type of Request:* Renewal; (4) *Purpose:* This package contains information collections necessary to annually plan, solicit, negotiate, award, administer, and closeout grants and cooperative agreements under the Department's financial assistance programs; (5) *Estimated Number of Respondents* 41,340; (6) *Estimated Total Burden Hours:* 573,732; and (7) *Number of Collections:* The information collection request contains 16 information and/or recordkeeping requirements; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308. Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on August 21, 2013.

David Boyd,

Deputy Director, Office of Acquisition and Project Management.

[FR Doc. 2013–21117 Filed 8–28–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Improving Performance of Federal Permitting and Review of Infrastructure Projects

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Request for Information (RFI).

SUMMARY: The Department of Energy's Office of Electricity Delivery and Energy Reliability, in collaboration with the Member Agencies of the Steering Committee (Member Agencies) created under Executive Order 13604 of March 22, 2012, and pursuant to the June 7, 2013 Transmission Presidential Memorandum, is seeking information on a draft Integrated, Interagency Pre-Application (IIP) Process for significant onshore electric transmission projects requiring Federal Authorization(s).

DATES: Comments must be received on or before September 30, 2013.

ADDRESSES: Comments should be addressed to: Julie A. Smith or Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Because of delays in handling conventional mail, it is recommended that documents be transmitted by electronic mail to *juliea.smith@hq.doe.gov* or *christopher.lawrence@hq.doe.gov*, or by facsimile to 202–586–7031.

FOR FURTHER INFORMATION CONTACT: Julie A. Smith (Program Office) at 202–586–7668, or by email to *juliea.smith@hq.doe.gov;* or Christopher Lawrence (Program Office) at 202–586–7680, or by email to *christopher.lawrence@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Modernizing our Nation's electric transmission grid requires improvements in how transmission lines are sited, permitted, and reviewed. As part of its efforts to improve the performance of Federal siting, permitting, and review processes for infrastructure development, the Administration created a Rapid Response Team for Transmission (RRTT), a collaborative effort involving nine executive departments and

agencies. The RRTT is working to improve the efficiency, effectiveness, and predictability of transmission siting, permitting, and review processes, in part through increasing interagency coordination and transparency. An integrated pre-application process is one potential method to achieve these goals and to increase the predictability of the siting, permitting, and review processes.

This Request for Information seeks public input on a draft IIP Process intended to improve interagency and intergovernmental coordination focused on ensuring that Project Proponents develop and submit accurate and complete information early in the project planning process to facilitate efficient and timely environmental reviews and agency decisions.

Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects)

On March 22, 2012, the President issued an Executive Order that stated:

[I]t is critical that executive departments and agencies (agencies) take all steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth . . . . They must encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays . . . . They must rely upon early and active consultation with State, local, and tribal governments to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent rather than sequential reviews . . . Also, these elements must be integrated into project planning processes so that projects are designed appropriately to avoid, to the extent practicable, adverse impacts on public health, security, historic properties and cultural resources, and the environment, and to minimize or mitigate impacts that may occur.

Presidential Memorandum—Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures

On May 17, 2013, the President issued a memorandum Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures to the heads of Executive Departments and Agencies. That Memorandum stated:

Through the implementation of Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), executive departments and agencies (agencies) have achieved better outcomes for communities and the environment and realized substantial time savings in review and permitting by prioritizing the deployment of resources to specific sectors and projects, and by implementing best-management practices.

These best-management practices include: integrating project reviews among agencies with permitting responsibilities; ensuring early coordination with other Federal agencies, as well as with State, local, and tribal governments; strategically engaging with, and conducting outreach to, stakeholders; employing project-planning processes and individual project designs that consider local and regional ecological planning goals; utilizing landscape- and watershed-level mitigation practices; promoting the sharing of scientific and environmental data in open-data formats to minimize redundancy, facilitate informed project planning, and identify data gaps early in the review and permitting process; promoting performance-based permitting and regulatory approaches; expanding the use of general permits where appropriate; improving transparency and accountability through the electronic tracking of review and permitting schedules; and applying best environmental and cultural practices as set forth in existing statutes and policies.

Presidential Memorandum—Transforming our Nation's Electric Grid Through Improved Siting, Permitting, and Review

On June 7, 2013, the President issued a memorandum on Transforming our Nation's Electric Grid Through Improved Siting, Permitting, and Review (Transmission Presidential Memorandum) to the heads of Executive Departments and Agencies. That Memorandum stated:

In furtherance of Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), this memorandum builds upon the work of the RRTT to improve the Federal siting, permitting, and review processes for transmission projects. Because a single project may cross multiple governmental jurisdictions over hundreds of miles, robust collaboration among Federal, State, local, and tribal governments must be a critical component of this effort.

Section 4(a) of the Memorandum directs that:

Member Agencies shall develop an integrated, interagency pre-application process for significant onshore electric transmission projects requiring Federal approval. The process shall be designed to: promote predictability in the Federal siting, permitting, and review processes; encourage early engagement, coordination, and collaboration of Federal, State, local, and tribal governments, non-governmental organizations, and the public; increase the use of integrated project planning early in the siting, permitting, and review processes; facilitate early identification of issues that could diminish the likelihood that projects will ultimately be permitted; promote early planning for integrated and strategic mitigation plans; expedite siting, permitting, and review processes through a mutual understanding of the needs of all affected Federal agencies and State, local, and tribal governments; and improve environmental and cultural outcomes. By September 30, 2013, Member Agencies shall provide to the Chief Performance Officer (CPO) and the Chair of the Council on Environmental Quality a plan, including timelines and milestones, for implementing this process.

Section 4(b) further states that in implementing Executive Order 13604, Member Agencies shall:

(i) improve siting, permitting, and review processes for all electric transmission projects, both onshore and offshore, requiring Federal approval. Such improvements shall include: increasing efficiency and interagency coordination; increasing accountability; ensuring an efficient decision-making process within each agency; to the extent possible, unifying and harmonizing processes among agencies; improving consistency and transparency within each agency and among all agencies; improving environmental and cultural outcomes; providing mechanisms for early and frequent public and local community outreach; and enabling innovative mechanisms for mitigation and mitigation at the landscape or watershed scale; and

(ii) facilitate coordination, integration, and harmonization of the siting, permitting, and review processes of Federal, State, local, and tribal governments for transmission projects to reduce the overall regulatory burden while improving environmental and cultural outcomes.

Request for Information (RFI)

The Department of Energy (DOE) seeks public input on the following draft IIP Process prepared in collaboration with the Member Agencies and pursuant to section 4(a) of the June 7, 2013 Transmission Presidential Memorandum and in light of Executive Order 13604. In responding to this RFI, please specify your affiliation or organization.

(1) Please provide feedback on the following draft IIP Process, including any suggested changes or concerns with the proposed process. We are particularly interested in whether the proposed IIP Process efficiently meets the goals below and stated in the Transmission Presidential Memorandum. Please also comment on whether all Federal agencies with applicable permitting authority to the proposed project should be mandatorily required to participate in the IIP Process.

(2) Please provide any comments on whether analogous integrated, interagency pre-application processes should be developed for other permitting of other major infrastructure sector projects covered in section 2(a) of EO 13604. What should be the highest

priority sectors that would benefit from this type of process? What key changes would need to be made to adapt the proposed IIP Process to other sectors?

IIP Process

Purpose: The purpose of the proposed IIP Process is to establish a coordinated series of meetings and other actions that would take place prior to a Federal agency accepting a high-voltage transmission line application or taking other action that would trigger Federal review, permitting, and consultation or other requirements, such as those required under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act, and Sections 7 and 10 of the Endangered Species Act.

The proposed IIP Process is designed to improve interagency and intergovernmental coordination, to encourage early engagement with stakeholders, and to help ensure Project Proponents develop and submit accurate and complete information early in the project planning process. Providing such information, for example, regarding potential environmental and cultural resource impacts of the proposed project will help the Project Proponent and Federal agencies identify potential requirements and challenges that may affect potential projects. Early identification will help ensure that the Project Proponent can submit Federal Authorization requests that address or avoid these issues, thereby simplifying later coordination and approval processes. The IIP Process does not substitute for compliance with NEPA or other required Federal reviews, but it can ensure that potential issues are identified before a Project Proponent files an application, thereby simplifying later review processes.

Goals: The goals of the IIP Process are to enhance early communication and coordination; enhance public engagement and outreach; develop early iterative feedback on routing options and alternatives; promote predictability; and ultimately reduce the time required to reach a decision to approve or deny a project while also ensuring compliance with environmental laws.

Applicability:

Project Proponents: A developer of a Qualifying Project [1] may elect to utilize the IIP Process. If a developer of a Qualifying Project elects not to utilize the IIP Process, the developer is encouraged to inform DOE in writing as soon as possible of its decision not to request that its transmission project be considered in the IIP Process.

Federal Entities: Under the proposed IIP Process, all identified Federal Entities would be required to participate in the IIP Process for Qualifying Projects for which Project Proponents have submitted and DOE has accepted an Initiation Request. All identified Federal Entities will, at a minimum, be required to attend the Initial Meeting and the Final Meeting.[2] The list of Federal Entities will be revised as necessary during the IIP Process based on the information provided by the Project Proponent prior to each interim meeting and otherwise publicly available information. DOE will oversee the IIP Process and coordinate the Federal Entities as described below even when it is not responsible for issuing a Federal Authorization.

Project Proponent Public Outreach Plan: During the initial meeting, the Project Proponent would be strongly encouraged to develop a Public Outreach Plan. The purpose of the Public Outreach Plan is to ensure the Project Proponent actively engages and receives feedback from all stakeholders when the Project Proponent is evaluating various routing options. A Project Proponent's Public Outreach Plan would not supplant the Federal Entity's public participation requirements under NEPA.

Cost Recovery: Federal Entity attendance at IIP Process meetings and other Federal Entity participation in the IIP Process depends on agency resources or the authority to recover costs from Project Proponents Currently, certain agencies may only exercise cost-recovery authorities after an application has been submitted. To the extent allowed by law, some Federal Entities may seek cost recovery from the Project Proponents as soon as possible in the IIP Process.

Implementation of IIP Process: The Member Agencies of the Steering Committee have not determined how to implement the draft IIP Process. Once the Steering Committee receives and considers the public input and approves the full contours of the IIP Process, it will submit on September 30, 2013, an implementation plan that includes timelines and milestones to the Chief Performance Officer and the Chair of the CEQ. The draft IIP Process described in this RFI may complement some Federal Entities' existing pre-application processes, but implementation of the process may require some Federal Entities to revise their existing review and permitting regulations, policies and procedures.

Relationship to NEPA and Other Environmental and Review Processes: None of the IIP Process meetings are part of the NEPA or other environmental and review processes but will inform those processes. Feedback provided by the Federal Entities is preliminary and would not constitute a commitment to approve a Federal Authorization request. Moreover, no agency would or could determine prior to the formal NEPA process that the Project Proponent's proposed or preferred Study Corridors and Routes would constitute a reasonable range of alternatives for NEPA purposes. The documents and communications developed in this process would be preserved by the Federal Entities and would, as appropriate, become part of any subsequent administrative record.

Integrated, Interagency Pre-Application Process

I. Purpose, Goals, Design, and Applicability of the Integrated, Interagency Pre-Application (IIP) Process

A. *Purpose:* The purpose of the IIP Process is to improve interagency and intergovernmental coordination and to help ensure Project Proponents develop and submit accurate and complete information early in the project planning process to facilitate efficient and timely environmental reviews and agency decisions. Providing such information (e.g., regarding potential environmental and cultural resource impacts of the proposed project) will help the Project Proponent, Federal Entities and relevant Non-Federal Entities identify potential requirements and challenges so that the Project Proponent can submit authorization requests that address or avoid these

[1] A Qualifying Project is (1) (a) a non-marine high voltage transmission line (230 kV or above) and its attendant facilities or (b) a regionally or nationally significant non-marine transmission line and its attendant facilities, in which (2) all or part of the proposed transmission line is used for the transmission of electric energy in interstate commerce for sale at wholesale, and (3) all or part of the proposed transmission line (a) crosses jurisdictions administered by more than one Federal Entity or (b) crosses jurisdictions administered by a Federal Entity and is considered for Federal financial assistance from a Federal Entity. Qualifying Projects do not include those for which an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or where a pre-filing procedure has been initiated, under section 216(b) of the Federal Power Act (16 U.S.C. 824p(b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridor).

[2] A Federal Entity whose permitting authority for construction or modification of electric transmission facilities is limited to facilities for which an application is filed under section 216(b) of the Federal Power Act may participate in any interim meeting at its sole discretion.

issues, thereby simplifying later coordination and approval processes.

B. *Goals:* The goals of the IIP Process are to enhance early communication and coordination; enhance public engagement and outreach; develop early iterative feedback on possible routing options and alternatives; promote predictability; and ultimately reduce the time required to reach a decision to approve or deny a project while also ensuring compliance with environmental laws.

C. *Design:*

(1) The proposed IIP Process establishes a coordinated series of meetings and other actions, as described in sections II–VII below, that would take place prior to a Federal agency receiving an application or taking other action that would trigger Federal review and consultation requirements, such as those required under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act and Sections 7 and 10 of the Endangered Species Act. DOE will oversee the IIP Process and coordinate the Federal Entities as described below even when DOE is not responsible for issuing a Federal Authorization.

(2) Absent an exception, the IIP Process will consist of four meetings: Initial Meeting, Study Corridors Meeting, Routing Meeting, and Final Meeting. The purpose of this series of meetings is to obtain iterative feedback among Federal Entities and invited non-Federal Entities, and for the Project Proponent to refine its application for Federal Authorization while reducing potential siting conflicts that could delay processing of that application. Each meeting will be initiated by the Project Proponent through a meeting request described in sections II–VI below.

D. *Lead Coordinating Agency.*

(1) DOE shall act as the lead agency for purposes of coordinating the IIP Process among all Federal Entities and Project Proponents.

(2) To the maximum extent practicable and consistent with Federal law, DOE shall coordinate the IIP Process with any non-Federal Entities.

(3) DOE, in exercising its responsibilities, will consult regularly with FERC, as well as electric reliability organizations, and transmission organizations approved by FERC.

(4) To perform the coordination function effectively, DOE requires the active participation of the Project Proponent, including providing requested information in a timely manner.

E. *Applicability:*

(1) *Qualifying Projects:* Qualifying Projects include (1) (a) a non-marine high voltage transmission line (230 kV or above) and its attendant facilities or (b) a regionally or nationally significant non-marine transmission line and its attendant facilities, in which (2) all or part of the proposed transmission line is used for the transmission of electric energy in interstate commerce for sale at wholesale, and (3) (a) all or part of the proposed transmission line crosses jurisdictions administered by more than one Federal Entity or (b) crosses jurisdictions administered by a Federal Entity and is considered for Federal financial assistance from a Federal Entity. Qualifying Projects do not include those for which an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or where a pre-filing procedure has been initiated, under section 216(b) of the Federal Power Act (16 U.S.C. 824p(b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridor).

(2) *Project Proponent Participation:*

(a) Developers of Qualifying Projects may elect to utilize the IIP Process. A transmission developer initiates the IIP Process by submitting an Initiation Request as described in Section II.A. below. If a developer of a Qualifying Project elects not to utilize the IIP Process, the developer is encouraged to inform DOE in writing as soon as practicable of its decision not to request that its transmission project be considered in the IIP Process.

(b) Developers of transmission projects that are not 230 kV or above but are nonetheless regionally or nationally significant may request that such a project be deemed a Qualifying Project by filing an Initiation Request with DOE, including an explanation of how its proposed project is regionally or nationally significant. DOE, in reviewing the Initiation Request as described in this Part, will determine whether the transmission project is a Qualifying Project and eligible to participate in the IIP Process.

(c) Upon DOE's determination that a developer's proposed transmission project is a Qualifying Project, the developer will be deemed a Project Proponent under the IIP Process.

(3) *Federal Entity Participation:*

(a) Identification of Federal Entities: DOE will identify an initial list of Federal Entities to participate in the IIP Process based on the Initiation Request. The list of Federal Entities will be revised as necessary during the IIP Process based on the information provided by the Project Proponent prior to each interim meeting and publicly available information.

(b) Participation:

i. Initial and Final Meetings:

1. All identified Federal Entities must attend the Initial Meeting to accomplish the requirements outlined in Section II.E. of the IIP Process and the Final Meeting to accomplish the requirements outlined in Section VII.D. of the IIP Process; provided, however, that a Federal Entity whose permitting authority for construction or modification of electric transmission facilities is limited to facilities for which an application is filed under section 216(b) of the Federal Power Act may participate in any Initial and/or Final Meeting at its sole discretion.

2. DOE will use information technologies to ensure that Federal Entities unable to attend in person can participate.

ii. Interim Meetings.

1. Federal Entities will be expected to attend all IIP Process meetings. However, based on the information provided by the Project Proponent prior to each interim meeting, as well as otherwise publicly available information, Federal Entities may assess whether their regulatory roles and responsibilities or the potential substantive impact of the proposed project on properties under their jurisdiction warrants their participation in the next interim meeting or other related pre-application activities prior to the next interim meeting.

2. If the Federal Entity determines that its regulatory roles and responsibilities or the potential substantive impact of the proposed project is insufficient to warrant its participation in the next interim meeting, it will notify DOE and other participating Federal Entities of its determination and of the rationale for that determination no later than 15 calendar days prior to the next interim meeting. Notwithstanding the requirements of this section, a Federal Entity whose permitting authority for construction or modification of electric transmission facilities is limited to facilities for which an application is filed under section 216(b) of the Federal Power Act may participate in any interim meeting at its sole discretion.

3. If additional Federal Entities are identified through information provided to DOE by the Project Proponent or through other publicly available information between the Initial and Final Meetings, they will be notified by DOE no later than 30 days prior to the next interim meeting and provided the information that identified them.

4. Unless otherwise determined by DOE (in consultation with the applicable Federal Entity) that a Federal Entity's participation is unnecessary in light of its regulatory roles and responsibilities or the proposed project's potential substantive impact on properties under their jurisdiction, such Federal Entity must attend the next meeting.

(4) *Non-Federal Entities:* Non-Federal Entities will be invited to attend each of the IIP Process meetings described below.

(5) *Cost Recovery:* Federal Entity attendance at IIP Process meetings and other Federal Entity participation in the IIP Process depends on agency resources or the authority to recover costs from Project Proponents. Currently, certain Federal Entities may exercise cost-recovery authorities only after an application has been submitted. To the extent allowed by law, some Federal Entities may seek cost recovery from the Project Proponents as soon as possible in the IIP Process.

II. Initial Meeting

The Initial Meeting for the IIP Process will be scheduled as soon as practicable after a Project Proponent has identified the two proposed end points of a project and the proposed locations of any intermediate substations, but before identification of potential Study Corridors or Proposed Routes.

A. If electing to utilize the IIP Process pursuant to section I.E.2, the Project Proponent must submit an Initiation Request to commence the IIP Process to DOE. The Initiation Request must include:

(1) A statement that the Project Proponent requests to use the IIP Process;

(2) Primary contact information for the Project Proponent;

(3) The legal information for the Project Proponent: Legal name; principal place of business; whether the requester is an individual, partnership, corporation, or other entity; the state laws under which the requester is organized or authorized;

(4) A description of the Project Proponent's financial and technical capability to construct, maintain, and decommission the project:

(5) A brief description of the proposed project, including end points, voltage, ownership, justification for the line, intermediate substations if applicable, and, to the extent known, any information about constraints or flexibility with respect to the project;

(6) Project Proponent's proposed schedule, including timeframe for filing necessary Federal and state applications, construction start date, and planned in-service date, if approved;

(7) A list of potentially affected Federal and Non-Federal Entities, as defined below;

(8) Based on existing, relevant, and reasonably available information, provide a description of the known existing major site conditions and areas of concern, including:

(a) Land, airspace. and water uses in the Project Area as defined below;

(b) Any known or potential conflicts with or adverse impacts to the environment or military activities;

(c) Any listed threatened or endangered, candidate, or special status species that may be present in the Project Area or within designated critical habitat in or near the Project Area;

(d) The aquatic habitats, including estuarine and marine environments, and water bodies, including wetlands, in the Project Area;

(e) Existing or proposed project facilities or operations, and the potential for co-location; and

(f) Potential avoidance, minimization, and mitigation options (onsite and offsite) to reduce the potential impacts of the proposed project, including existing Regional Mitigation Strategies, where available, and onsite and offsite management activities, where applicable.

(9) Detailed map(s) and geospatial information that illustrate the Project Area and, within the Project Area:

(a) General land status including the areas of Federal and Non-Federal Entity jurisdiction and any protected areas, including Presidentially or Congressionally-designated areas (e.g., National Parks, National Wildlife Refuges, Wilderness Areas, National Historic and Scenic Trails), administratively-protected areas (e.g., Areas of Critical Environmental Concern, designated roadless areas), Indian trust lands, and military installations, ranges and airspace;

(b) Topographical and resource features that are relevant to the siting of transmission lines, (e.g., airports, waterbodies and wetlands, wildlife resources and the data used to identify these resources);

(c) Known information about protected avian, aquatic, and terrestrial species in the Project Area, as well as other biological information that will be necessary for an environmental review;

(d) Known information about historic properties and other important cultural resources in the Project Area;

(e) Known information about low income communities and minority populations;

(f) Potential constraints caused by impacts on military test, training, and operational missions, including impacts to installations, ranges, water resource projects, and airspace;

(g) If known, potential impacts on the Nation's aviation system, including FAA restricted airspace;

(h) Proposed use of previously disturbed lands, existing corridors, including corridors designated under Section 503 of the Federal Land Policy and Management Act (FLPMA) and Section 368 of the Energy Policy Act of 2005, transportation rights-of-way; feasibility for co-location of facilities; and

(i) Potential avoidance, minimization, and mitigation options (onsite and offsite) to reduce the impact of the proposed project, including existing Regional Mitigation Strategies, where available.

(10) Project Proponent's interests and objectives;

(11) To the extent available, regional transmission planning documents, including status of regional reliability studies and interconnection requests;

(12) Citations for sources, data, and analyses used to develop the Initiation Meeting Request materials.

B. Within 15 calendar days of receiving the Initiation Request, DOE will notify the Project Proponent that:

(1) The Initiation Request meets the screening criteria of this section, including whether the project constitutes a Qualifying Project;

(2) The Initiation Request does not meet the IIP requirements and provide the reasons for that finding and a description of how the Project Proponent may, if applicable, address any deficiencies through supplementation of the information contained in the Initiation Request.

C. At the same time as notifying the Project Proponent that its Initiation Request meets the requirements of this section, DOE will provide the potential Federal Entities with the Initiation Request.

D. DOE, in consultation with the identified Federal Entities, will convene the Initial Meeting with the Project Proponent and all identified Federal Entities as soon as practicable and no later than 45 calendar days after notifying the Project Proponent and potential Federal Entities that the Initiation Request meets the requirements of this section. The Initial Meeting will be convened in the region where the project is located. Federal Entities will have at least 15 days to

review the Initiation Request prior to the meeting. All identified Federal Entities must attend the Initial Meeting. DOE also will invite all identified Non-Federal Entities to attend the Initial Meeting and will simultaneously provide them with the Initiation Request. DOE will use information technologies to ensure that Federal Entities and invited Non-Federal Entities unable to attend in person can participate in the Initial Meeting.

E. During the Initial Meeting, the following will occur:

(1) DOE will discuss the IIP Process with the Project Proponent, including the requirements for a Public Outreach Plan and any requirements of cost recovery where applicable.

(2) The Project Proponent will describe the proposed project and the contents of its Initiation Request.

(3) The Federal Entities will, to the extent possible and based on the information provided by the Project Proponent and publicly available information, preliminarily identify the following:

(a) Potential environmental siting constraints and resources of concern and an early assessment for the potential for conflict;

(b) Potential cultural resources and historic properties of concern, particularly those that occur at a landscape scale that should be avoided during project siting;

(c) Potential impacts on low income communities and minority populations;

(d) Potential constraints caused by impacts on military test, training, and operational missions, including impacts to installations, ranges, and airspace;

(e) Potential impacts on the Nation's aviation system;

(f) Potential areas that present challenges or conflicts that could increase the time needed for the Federal government to evaluate the application if the route is sited through such areas (e.g., right-of-way avoidance areas identified through agency land management plans, National Historic Landmarks, traditional religious and cultural properties significant to Indian tribe(s), National Scenic and Historic Trails, National Wildlife Refuges, units of the National Park System, marine sanctuaries); and

(g) Potential opportunities to site routes through designated corridors, previously disturbed lands, and/or lands with existing infrastructure as a means of potentially reducing the time needed for the Federal government to evaluate the application for a proposed route(s) through such areas (e.g., colocation with existing infrastructure or previously disturbed lands, energy corridors designated by the Department of the Interior (DOI) or the Department of Agriculture (USDA) under Section 368 of the Energy Policy Act of 2005; an existing right-of-way; and/or a utility corridor identified in a land management plan).

(h) Authorized uses that may conflict with the proposal;

(i) Affected Federal, State, and local land use plans;

(j) Potential for public controversy; and

(k) Potential avoidance, minimization, and mitigation options (onsite and offsite) to reduce the potential impact of the proposed project, including existing Regional Mitigation Strategies, where available.

(4) The Federal Entities will also describe:

(a) Statutory and regulatory authorities, roles, and responsibilities;

(b) The Project Proponent's role and responsibilities to support compliance with applicable statutory and regulatory authorities; and

(c) Types of studies likely to be needed to complete the project, including studies needed to comply with laws and policies for cultural resource and tribal consultation and endangered, threatened or otherwise protected species, visual resources, and aquatic and terrestrial resources.

(5) Based on their review of the available information, the Federal Entities will do the following:

(a) Comment on the proposed boundaries of the Project Area;

(b) Request additional information from the Project Proponent, to the extent necessary; and

(c) Provide additional information, including data sources, to the Project Proponent that could assist in identifying risks or benefits of siting the project in alternative locations within the Project Area.

(6) Any Non-Federal Entity participating in the Initial Meeting will be invited to:

(a) Comment on the proposed boundaries of the Project Area;

(b) Request additional information from the Project Proponent, to the extent necessary; and

(c) Provide additional information, including data sources or relevant studies, to the Project Proponent that could assist in identifying risks or benefits of siting the project in alternative locations within the Project Area.

(7) All identified Federal and non-Federal Entities will provide contact information to the Project Proponent;

(8) The Project Proponent will provide points of contact to DOE and to the Federal and Non-Federal Entities;

(9) DOE will document points of contact for each Federal Entity and for each Non-Federal Entity and the list of issues or potential concerns identified in the Initial Meeting.

(10) DOE will advise the Project Proponent that it will be required to ensure that stakeholders have access to accurate and timely information on the proposed project and permit application process. The access to this information is meant to solicit meaningful stakeholder input. Following the Initial Meeting, the Project Proponent will be required, as provided below in Section IV, to submit a Public Outreach Plan, to coordinate public interface and communications, and to identify at least one person primarily responsible for public outreach.

(11) DOE will advise the Project Proponent that it may be required to fund the development and maintenance of one or more Web sites to share project information.

(12) If known, DOE will inform the Project Proponent which agency/ies has been identified as the NEPA Lead Agency and the lead agency for Section 106 consultation.

(13) DOE will discuss potential contractor assistance for preparation of the NEPA document and other material relevant to Federal Authorizations.

(14) DOE will inform the Project Proponent that the IIP meeting schedule allows flexibility as to the number of meetings. As described below, the Study Corridor Meeting, Routing Meeting, and Final Meeting establish goals for refining the Project Proponent's proposal to be filed later in an application to a Federal Entity. Depending on the complexity of the Qualifying Project, as well as the extent of conflicts identified by Federal Entities and others, a proposal could meet the meeting goals described in Section V and VI below with fewer meetings, thus reducing time necessary to satisfy the purpose of the IIP Process.

F. Based on the information provided by the Project Proponent and Federal and Non-Federal Entities prior to and during the Initial Meeting, the Federal Entities, in consultation with the Project Proponent, will establish a preliminary non-binding schedule for the review of the Project Proponent's IIP filings, including targets for additional meetings (as needed) addressing study of corridor and routing options for the project. Based on the facts of a particular project, the Federal Entities may agree to modify the IIP Process to accommodate the needs of the particular proposed project.

G. Any preliminary feedback provided by the Federal Entities at the

Initial Meeting, or provided to the Project Proponent in writing within 30 calendar days of the Initial Meeting, is intended to identify potential issues and/or resource conflicts. The Federal Entities reserve the right to provide additional comments as needed. The preliminary feedback and any later feedback do not constitute an agency decision or commitment by those Federal entities to approve any authorization request.

III. Quarterly Reporting

Upon completion of the Initial Meeting, the Project Proponent is required to submit quarterly status updates to DOE via email until the completion of the Final Meeting. DOE will distribute quarterly updates to Federal and Non-Federal Entities within 10 days after receipt from the Project Proponent.

IV. Public Outreach and Tribal Coordination Plans

A. *Public Outreach Plan:* Within 60 days after the Initial Meeting, unless otherwise agreed upon, the Project Proponent will be required to submit a draft Public Outreach Plan to describe how it will coordinate public interface, communications, and involvement during the IIP Process. The plan must identify at least one person primarily responsible for public outreach efforts. DOE, in consultation with the Federal Entities, will coordinate and provide DOE and the Federal Entities' feedback to the Project Proponent within 60 days.

(1) The Public Outreach Plan must accomplish the following:

(a) Identify specific tools and actions to facilitate stakeholder communications and public information, including an up-to-date Company Project Web site and a readily accessible, easily identifiable, single point of contact within the company;

(b) Identify how and when meetings on the location of potential Study Corridors or potential Routes will be publicized prior to the submission of the application(s) for Federal Authorization, as well as where those meetings will be held and how many there will be;

(c) Identify known stakeholders and how stakeholders are identified;

(d) Describe the type of location (for example, libraries, community reading rooms, or city halls) in each county where the Project Proponent will provide publicly available copies of relevant documents and materials related to the proposed project;

(e) Describe the evaluation criteria being used by the Project Proponent to identify and develop the potential Study Corridors or potential Routes prior to submission of the application(s) that are presented to stakeholders during project planning outreach efforts as described in the Public Outreach Plan;

(f) Explain how the Project Proponent intends to respond to requests for information from the public;

(g) Explain how the Project Proponent intends to record public requests and Project Proponent responses to the public;

(h) Describe how and when notification of owners of property located within the proposed Project Area will occur; and

(i) Identify how and when information will be provided to and input will be received from Non-Federal Entities identified at the Initial Meeting.

(2) A Proponent's Public Outreach Plan will not supplant the Federal agency's public participation requirements under NEPA.

B. *Tribal Coordination Plan:* Within 60 days after the Initial Meeting, the Project Proponent will be required to submit a draft Tribal Coordination Plan describing how the Project Proponent will coordinate tribal interface and communication during the IIP. The role of the Project Proponent at this stage is to gather initial information to be included in the Federal agency tribal consultation plan and to ascertain the views of the tribe(s) on the effects to the environment and historic properties, including properties of religious and cultural significance in the area of the potential study corridor or route. The Project Proponent will be required to identify its point of contact responsible for tribal outreach efforts. DOE, in consultation with the Federal Entities, will coordinate and provide DOE and the Federal Entities' feedback to the Project Proponent within 60 days.

(1) The Tribal Coordination Plan must accomplish the following:

(a) Identify specific tools and actions to facilitate tribal involvement, communications and the sharing of information, including an up-to-date Company Project Web site and a readily accessible, easily identifiable, single point of contact within the Project Proponent;

(b) Explain how the Project Proponent will coordinate with tribes to gather baseline information about their views on the environment and historic properties and potential impact of the project.

(c) Identify how and when information on the IIP meetings on the location of potential Study Corridors or Routes will be provided to the Tribes prior to the submission of the application, as well as where those meetings will be held and how many there will be;

(d) Identify known tribes with interest in the project area and how tribes were identified;

(e) Describe how project information will be transmitted to tribes;

(f) Describe what project information will be provided to the tribes, including but not limited to a listing of all Federal Authorizations the Project Proponent expects to seek;

(g) Gather information from tribal representatives regarding the potential presence of places of religious and cultural significance to their tribes; the likely impacts of the proposed project on such places; and the potential to mitigate such effects, if any;

(h) Explain how the Project Proponent intends to respond to requests for information from tribes;

(i) Explain how the Project Proponent intends to record tribal communications and Project Proponent responses to the tribe;

(j) Identify any tribe(s) that were contacted by the Project Proponent but declined to discuss places of religious and cultural significance to their tribes or potential issues regarding the proposed project with the Project Proponent;

(k) Explain how the Project Proponent has shared information on the development of the Tribal Coordination Plan with tribes and to what extent the tribes provided input on the Plan during its development;

(l) Determine in consultation with the tribe(s) how sensitive tribal information will be protected from inappropriate disclosure or retention.

(2) A Proponent's Tribal Coordination Plan will not supplant the Federal agency's government-to-government consultation obligations under Federal law.

V. Study Corridors Meeting

After the Initial Meeting, the Project Proponent will develop potential Study Corridors for the project. After the Project Proponent has identified the proposed Study Corridors and has received feedback from DOE and the Federal Entities on the Public Outreach Plan, the Project Proponent will submit a Study Corridor Meeting Request to DOE. DOE will distribute the Study Corridors Meeting Request to the previously identified Federal Entities within 5 calendar days of receipt of the Study Corridor Meeting Request.

A. The Study Corridor Meeting Request must include:

(1) A description of the factors (screening criteria) identifying the potential Study Corridors;

(2) A map of the Project Area showing the location of the potential Study Corridors.

(3) High-resolution maps of the potential Study Corridors with more detailed information than the Project Proponent was able to provide in the Initial Meeting, as described in section II.A., that precisely show existing rights of way, utility and transportation corridors, environmental resources, public land ownership, waterbodies, wetlands, residences, important farmland, rangeland, and forestland, and historic properties, and military installation, ranges, and managed airspace, and any other information required by the Federal Entities, if designated.

(4) Building on the information provided in the Initiation Request and based on existing, relevant, and reasonably available information, provide aAn updated description of the following information, within the potential Study Corridors:

(a) Information on the existing environment and known cultural resources and/or historic properties;

(b) Existing data or studies relevant to the existing environment and cultural resources and/or historic properties, to the extent already collected;

(c) Any known or potential conflicts or adverse impacts to the environment, or military activities;

(d) Any listed threatened or endangered, candidate, or special status species that may be present in the potential Study Corridors or within designated critical habitat that may be present in in the potential Study Corridors;

(e) The aquatic habitats, including estuarine environments, in the potential Study Corridors;

(f) Any existing or proposed project facilities or operations, and the potential for co-location; and

(g) Potential avoidance, minimization, and mitigation options (onsite and offsite) to reduce the impact of the proposed project, including existing Regional Mitigation Strategies, where available, and onsite and offsite management activities, where applicable; and

(h) Any update on the status of implementation of the Public Outreach Plan.

(5) If the potential Study Corridors run through areas previously identified as having siting constraints or as areas of concern raised in the Initial Meeting or provided in written feedback to the Project Proponent following the Initial Meeting, a description of why avoiding such areas is not feasible in meeting the goals for the project and proposed mitigation for impacts to affected resources.

(6) Any updates to the previously identified list of the potentially affected Federal and Non-Federal Entities.

(7) Citations identifying sources, data, and analyses used to develop the Study Corridors Meeting Request materials, and any additional information needed.

B. Simultaneously with submitting the Study Corridors Meeting Request, the Project Proponent will post that request, along with its accompanying information, on the Company Project Web site.

C. Within thirty (30) calendar days of receiving a Study Corridors Meeting Request and distributing it to the Federal Entities, DOE, in consultation with the Federal Entities, will determine if the Study Corridors Meeting Request meets the requirements of this section and will notify the Project Proponent.

D. If the Study Corridors Meeting Request does not meet the requirements of this section, DOE will provide an explanation for that finding to the Project Proponent and describe how the Project Proponent may address any deficiencies through supplementation of the information contained in the Study Corridors Meeting Request.

E. DOE will convene the Study Corridors Meeting in the region where the project is located with the Project Proponent and all previously identified Federal Entities within thirty (30) calendar days after notifying the Project Proponent and all identified Federal Entities that the Study Corridors Meeting Request meets the requirements of this section. DOE will further invite all identified Non-Federal Entities to attend and will simultaneously provide them with the Study Corridors Meeting Request. DOE will use information technologies to ensure participants unable to attend in person can participate in the Study Corridors Meeting.

F. At the Study Corridors Meeting, the following will occur:

(1) The Federal Entities will, to the extent known and based on the information provided by the Project Proponent and publicly available information, preliminarily identify the following and any other reasonable criteria for eliminating potential Study Corridors from further consideration:

(a) Potential environmental siting constraints and resources of concern;

(b) Potential cultural resources and historic properties of concern;

(c) Potential areas that present challenges or conflicts that could increase the time needed for the Federal government to evaluate the application for a proposed route(s) through such areas (e.g., right-of-way avoidance areas identified through agency land management plans, National Historic Landmarks, traditional religious and cultural properties significant to Indian tribe(s), National Scenic and Historic Trails, National Wildlife Refuges, units of the National Park System, marine sanctuaries).

(d) Potential opportunities to site routes through designated corridors, previously disturbed lands, and/or lands with existing infrastructure as a means of potentially reducing the time needed for the Federal government to evaluate the application if the route is sited through such areas (e.g., colocation with existing infrastructure or previously disturbed lands, energy corridors designated by the DOI or USDA under Section 368 of the Energy Policy Act of 2005; an existing right-of-way; a utility corridor identified in a land management plan).

(e) Potential constraints caused by impacts on military test, training, and operational missions, including impacts to installations, ranges, and airspace.

(f) Potential constraints caused by impacts on the Nation's aviation system.

(g) Based on available information provided by the Project Proponent, biological (including threatened and endangered species and aquatic resources), cultural, and other surveys and studies that may be required for the potential Study Corridors.

(2) Such information and feedback to the Project Proponent does not constitute a commitment by Federal Entities to approve or deny any Federal Authorization request. Moreover, no agency would or could determine prior to the formal NEPA process that the Project Proponent's proposed or preferred Study Corridors and Routes presented or discussed during the IIP Process would constitute a reasonable range of alternatives for NEPA purposes.

(3) Participating Non-Federal Entities may also identify risks and benefits of siting the proposed project within the potential Study (Corridors.

(4) The Project Proponent must provide a list of all affected landowners and other stakeholders that have already been contacted, or have contacted the Project Proponent, about the project.

VI. Routing Meetings

Once the Project Proponent has developed potential Routes within the Study Corridors, it will submit a Routing Meeting Request to DOE. DOE will distribute the Routing Meeting Request to identified Federal Entities within 5 calendar days of receipt. Except for the items set forth below, the process used for Routing Meetings will

be the same process set forth above for the Study Corridors Meetings. In its Routing Meeting Request, the Project Proponent will provide more detailed data for each potential route than was submitted for the Study Corridors Meeting.

A. For example, for the potential proposed Routes identified within the Study Corridors, the Routing Meeting Requests should include:

(1) A description of the factors (screening criteria) in identifying the potential Routes;

(2) A map and description of the following: Residences, schools, daycare centers, hospitals, and airports; historic properties; areas identified for cultural significance [3]; areas of endangered and threatened species and designated critical habitat; land use; zoning by type; waters of the United States, floodplains and wetlands; Federal projects, including but not limited to dams, reservoirs, levees, other flood risk reduction projects, navigation channels, and environmental restoration projects; and, sections, townships, ranges, and municipal boundaries; and any identified low-income or minority populations; and

(3) A description of the actions completed on the Public Outreach Plan to date.

B. Within 60 calendar days of providing the Routing Meeting Request to the Federal Entities, DOE, in consultation with the Federal Entities, will determine if the Routing Meeting Request meets the requirements of this section.

C. DOE will convene the Routing Meeting in the region where the project is located with the Project Proponent and all previously identified Federal Entities 30 days after notifying the Project Proponent and all previously identified Federal Entities that the Routing Meeting Request meets the requirements of this section.

D. To the extent possible, the feedback mechanism from the Federal and Non-Federal Entities and opportunity for further comment on public participation will be the same as for the Study Corridors Meetings.

E. In addition to the information provided in the Study Corridors Meeting, Federal and Non-Federal Entities will also identify during the Routing Meeting the initial requirements for site surveys for historic properties and cultural resources, endangered, threatened or otherwise protected species, and aquatic resources for potential proposed Routes within the Study Corridors, and if applicable, Regional Mitigation Strategies.

VII. Final Meeting

After the Project Proponent has identified the potential proposed Route(s) within potential Study Corridor(s) that it intends to include in its Federal application(s), the Project Proponent will submit the Final Meeting Request to DOE. DOE will distribute the Final Meeting Request to previously identified Federal Entities within 5 calendar days of receipt of the Final Meeting Request.

A. The Final Meeting Request shall include:

(1) Maps of the potential proposed Route(s) within potential Study Corridor(s), including the line, substations and other infrastructure, which include at least as much detail as required for the Routing Meetings described above; and if available, GIS shapefiles or line data;

(2) If the proposed Routes are sited through any Geographic Areas of Concern identified in prior meetings, a preliminary plan for addressing those concerns;

(3) Summaries of all Project Proponent-sponsored project-specific surveys (biological, including aquatic resources, and visual and cultural surveys) for the proposed Routes along with the results of database and record reviews.

(4) If known, a schedule of completion for upcoming field resource surveys;

(5) A conceptual plan for potential mitigation options and measures, including avoidance, minimization, and mitigation (offsite and onsite), as well as Regional Mitigation Strategies, where available.

(6) Description of how the Project Proponent complied with its Public Outreach Plan;

(7) An estimated time of filing its request(s) for Federal Authorization(s).

B. Within 60 calendar days of receiving a Final Meeting Request, DOE, in consultation with the Federal Entities, will jointly select the NEPA Lead Agency, if not already identified, as set forth in section VII below, select the lead agency for consultation under Section 106 of NHPA; and determine whether the Final Meeting Request meets the requirements of this section.

C. Within 60 calendar days of making a determination that the Final Meeting Request meets the requirements of this section, DOE will convene the Final Meeting with the Project Proponent and all Federal Entities. Non-Federal Entities will also be invited to attend. DOE will use information technologies to ensure participants unable to attend in person can participate in the Final Meeting.

D. During the Final Meeting, the following will occur:

(1) Led by the NEPA Lead Agency, all Federal Entities will:

(a) Based on information provided by the Project Proponent to date, discuss identified key issues of concern to the agencies and public and potential mitigation measures anticipated for the project;

(b) Discuss statutory and regulatory standards that must be met to make decisions for applicable Federal Authorizations;

(c) Describe estimated time to make decisions for such Federal Authorizations and the anticipated cost (e.g., processing and monitoring fees and rent);

(d) Describe their expectations for written pre-application materials, if applicable; and

(e) Describe their expectations for a complete application.

(2) Any Non-Federal Entities are also encouraged to:

(a) Identify key issues of concern;

(b) Discuss statutory and regulatory standards that must be met to make decisions for applicable authorizations;

(c) Describe estimated time and complexity to make decisions for such authorizations and the anticipated cost (processing and monitoring fees and rent);

(d) Describe their expectations for written pre-application materials, if applicable; and

(e) Describe their expectations for a complete application.

(3) The Federal Entities will:

(a) If not completed prior to this point, specify the requirements for biological, including aquatic resources, and historic property and cultural resource surveys/studies for the proposed Route(s) within potential Study Corridor(s).

(b) Discuss available resources, including best practices for types of project, agency guidance, and existing Regional Mitigation Strategies, if applicable, or other information; and

(c) Identify the process that will be used for defining the mitigation measures, as well as what mitigation measures would be expected for various routes; and identify among themselves any possible overlap of mitigation measures.

(4) The Non-Federal Entities are also encouraged to:

[3] This may include traditional cultural properties, traditional cultural landscapes, and other properties of religious and cultural significance to Indian tribes to the extent such information is known and is not protected against public disclosure in accordance with Section 304 of the National Historic Preservation Act, 16 U.S.C. 470w–3.

(a) If not completed prior to this point, specify the requirements for biological, including aquatic resources, and historic property and cultural resource surveys/studies for the Route(s) within potential Study Corridor(s).

(b) Discuss available resources, including best practices for types of project, agency guidance, and existing Regional Mitigation Strategies, if applicable, or other information; and

(c) Identify the process that may be used for defining the mitigation measures, as well as what mitigation measures would be expected for various potential Route(s) within potential Study Corridor(s); and identify among themselves any possible overlap of mitigation measures.

(5) Federal and Non-Federal Entities may also identify among themselves any possible opportunities to synchronize or combine the review processes for their respective permits and approvals.

(6) The NEPA Lead Agency will:

(a) Describe the process of determining whether a third-party contractor will be selected for the NEPA review, if not completed prior to this point;

(b) Discuss possible locations for the NEPA scoping meetings;

(c) Discuss potential mitigation options and measures, and the process used for defining those measures, at a level of detail that is appropriate given the information available to the Project Proponent and the Federal and Non-Federal Entities at the time of the Final Meeting.

(d) Discuss the Federal Entities' plans to meet tribal consultation requirements of Executive Order 13084 and compliance with the NHPA.

(7) Nothing in this subsection requires agencies to commit to adopting particular mitigation measures or to limiting the mitigation measures that the NEPA Lead Agency and NEPA Cooperating Agencies might consider at later stages of NEPA review and in response to public comment.

(8) The Final Meeting will result in a description by Federal Entities of the remaining key issues of concern and areas that represent potential high, medium, or low resource conflicts that could impact the time for which it takes Federal agencies to process applications for a proposed facility within the identified Study Corridors. That description will not constitute a commitment by any agency to approve or deny any authorization request nor will it guarantee a particular outcome in any individual case. Moreover, no agency would or could determine prior to the formal NEPA process that the Project Proponent's proposed or preferred Study Corridors and Routes presented or discussed during the IIP Process would constitute a reasonable range of alternatives for NEPA purposes. The Non-Federal Entities will also be encouraged to provide such a description of key issues of concern and areas of conflict.

E. The NEPA Lead Agency will also describe the next set of milestones, including the creation of an interagency review schedule for the project once all written application materials have been deemed adequate, the issuance of a Notice of Intent to Prepare an Environmental Assessment or Environmental Impact Statement, and subsequent Scoping Meetings.

VIII. Selection of NEPA Lead Agency

A. DOE, in consultation with the Federal Entities, will coordinate the selection of a NEPA Lead Agency responsible for compiling a unified environmental review document for qualifying projects. Determination of the lead agency for preparing NEPA documents shall be in compliance with applicable law and with regulations issued by CEQ at 40 CFR part 1500 et seq.

(1) For Qualifying Projects that cross DOI-administered lands (including trust or restricted Indian lands) or USDA-administered lands, DOI and USDA will consult and jointly determine within 30 calendar days of receiving a Final Meeting Request whether a sufficient land management interest exists to support their assumption of the lead agency role; and, if so, which of the two agencies should assume that role.

B. DOI and USDA will notify DOE of their determination in writing within 10 calendar days of making the determination.

C. Unless DOE in writing notifies DOI and USDA of its objection to such determination within two calendar days of the DOI/USDA notification, such determination is deemed accepted and final. In deciding whether to object to such determination, DOE will consider the CEQ regulations pertaining to selection of the Lead Agency, including 40 CFR 1501.5(c).

D. When the NEPA Lead Agency is not established pursuant to paragraphs B–D of this section, the Federal Entities that will likely constitute the cooperating agencies for the unified environmental review document will consult and jointly determine a NEPA Lead Agency within 45 calendar days of receiving a Final Meeting Request. No determination of an agency as a NEPA Lead Agency under this rule shall be made absent that agency's consent.

E. The Federal Entities will notify DOE of their determination in writing within 10 days of making the determination. Unless DOE in writing notifies the Federal Entities of its objection within two calendar days of receiving this notification, such determination is deemed accepted and final. If DOE objects to such determination, CEQ will determine the NEPA Lead Agency according to 40 CFR 1501.5(e)–(f).

IX. Consolidated Administrative Record

A. Federal Entities are expected to include DOE on any communications with the Project Proponent, other Federal Entities, and Non-Federal Entities related to the IIP Process for a particular project.

B. DOE will maintain all information, e.g., documents and communications, it disseminates or receives from the Project Proponent and Federal and Non-Federal Entities relating to specific IIP Processes as part of the administrative record for a future, potential transmission application. Before disseminating information specific to one agency's review, DOE must receive approval from that agency in accordance with that agency's FOIA requirements.

C. At each meeting required in the IIP Process, DOE will record the key issues identified and, within 15 calendar days of the meeting, will send a list of such issues to the Federal and Non-Federal Entities that attended the meeting.

D. Within 45 calendar days of receiving the list, the Federal and Non-Federal Entities that attended the meeting will revise the list, if necessary, and send the list to DOE.

E. Within 30 calendar days of receiving the list in the above subsection, DOE will convey the list to the Project Proponent and all Federal and Non-Federal Entities that participated in the meeting.

F. DOE will document the list of identified issues, if any, for the consolidated administrative record.

G. Each Federal Entity is encouraged to maintain as part of a future, potential transmission application for which it may have a Federal Authorization the documents and communications developed in this process, which would, as appropriate, become part of its subsequent administrative record for that Federal Authorization.

X. Relationship to the NEPA Process and Other Environmental and Review Processes

None of the IIP Process meetings are part of the NEPA or other environmental and review processes but will inform those processes. Feedback provided by

the Federal agencies is preliminary and would not constitute a commitment to grant a Federal Authorization. Moreover, no agency would or could determine prior to the formal NEPA process that the Project Proponent's proposed or preferred Study Corridors and Routes presented or discussed during the IIP Process would constitute a reasonable range of alternatives for NEPA purposes. As set forth in Section IX, the documents and communications developed in this process would be preserved by the Federal agencies and would, as appropriate, become part of any subsequent administrative record.

Glossary

Federal Authorization means any authorization required under Federal law to site a transmission facility, including permits, special use authorizations, certifications, opinions, or other approvals. This term includes authorizations issued by Federal and Non-Federal Entities that are responsible for issuing decisions that are called for under Federal law for a transmission facility.

Federal Entities means any Federal agencies with relevant expertise or interests that may have jurisdiction pertinent to the project, are responsible for conducting permitting and environmental reviews of the proposed project or attendant facilities, or have special expertise with respect to environmental and other issues pertinent to or that are potentially affected by the project or its attendant facilities or providing funding for the same. Federal Entities include those with either permitting or non-permitting authority, for example, those entities with which consultation must be completed before authorizing a project.

Geographic Areas of Concern means those areas that present challenges or conflicts that could increase the time needed for the Federal government to evaluate the application if the route(s) are is sited through such areas (e.g., right-of-way avoidance areas identified through agency land management plans, National Historic Landmarks, traditional religious and cultural properties significant to Indian tribe(s), National Scenic and Historic Trails, National Wildlife Refuges, units of the National Park System, marine sanctuaries).

NEPA Lead Agency means the Federal agency, selected as provided for in this process pursuant to 40 CFR § 1501.5 to supervise the preparation of an environmental impact statement or an environmental assessment, as applicable, and to coordinate related Federal agency reviews.

Non-Federal Entities means Indian Tribes, multistate entities, and State and local government agencies with relevant expertise that may have jurisdiction within the Project Area, are responsible for conducting permitting and environmental reviews of the proposed project or attendant facilities, or have special expertise with respect to environmental and other issues pertinent to or that are potentially affected by the project or its attendant facilities. Non-Federal Entities include those with either permitting or non-permitting authority, for example those entities with whom consultation must be completed before authorizing a project.

Project Area means the geographic area to be considered when developing potential Study Corridors for environmental review and potential project siting. It is an area located between the two end points of the project (e.g., substations), including their immediate surroundings within at least one-quarter mile of that area, and over any proposed intermediate substations. The size of the Project Area should be sufficient to allow for the evaluation of potential alternative Routes with differing environmental, engineering, and regulatory constraints. Note that the Project Area does not necessarily coincide with "permit area," "area of potential effect," or "action area," which are specific to types of regulatory review as determined by the NEPA Lead Agency or DOE in consultation with the Project Proponent.

Project Proponent means a person or entity who initiates the IIP Process in anticipation of seeking Federal Authorizations for a Qualifying Project.

Qualifying Projects means (1) (a) a non-marine high voltage transmission line (230 kV or above) and its attendant facilities or (b) a regionally or nationally significant non-marine transmission line and its attendant facilities, in which (2) all or part of the proposed transmission line is used for the transmission of electric energy in interstate commerce for sale at wholesale, and (3) all or part of the proposed transmission line (a) crosses jurisdictions administered by more than one Federal Entity or (b) crosses jurisdictions administered by a Federal Entity and is considered for Federal financial assistance from a Federal Entity. Qualifying Projects do not include those for which an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or where a pre-filing procedure has been initiated, under section 216(b) of the Federal Power Act (16 U.S.C. 824p (b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridors).

Regional Mitigation Strategies means mitigation measures and a framework based on the results of regional, landscape or watershed-level analyses to directly compensate for project impacts.

Route means a linear area within which a transmission line could be sited. A route is usually several hundred feet wide. It should be wide enough to allow minor adjustments in the alignment of the transmission line so as to avoid sensitive features or accommodate potential engineering constraints but narrow enough to allow detailed study of the entire area.

Study Corridor means a contiguous area usually one mile to several miles wide within the Project Area where alternative Routes may be considered for further study.

Issued in Washington, DC, August 23, 2013.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–21098 Filed 8–28–13; 8:45 a.m.]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD–008]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to ASKO Appliances Inc. From the Department of Energy Residential Clothes Dryer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CD–008) that grants to ASKO Appliances Inc. (ASKO) a waiver from the DOE clothes dryer test procedure. The waiver pertains to the models of condensing residential clothes dryer specified in ASKO's petition. Condensing clothes dryers cannot be tested using the currently applicable DOE test procedure. Under today's decision and order, ASKO shall not be required to test and rate its specified models of residential condensing clothes dryer pursuant to the current test procedure.

DATES: This Decision and Order is effective August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. James Silvestro, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 286–4224. Email: *James.Silvestro@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR), § 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants ASKO a waiver from the applicable residential clothes dryer test procedure at 10 CFR part 430 subpart B, appendix D, for the three models of condensing clothes dryer specified it its petition.

DOE notes that it has promulgated a final test procedure for clothes dryers that provides a mechanism for testing condensing clothes dryers. (76 FR 972, Jan. 6, 2011). Use of this test procedure will be required on the compliance date of any amended standards for clothes dryers. DOE has also published a direct final rule establishing amended standards for clothes dryers, which establishes standards for condensing clothes dryers. (76 FR 22454, April 21, 2011). Absent adverse comment that the Secretary determines may provide a reasonable basis for withdrawal of the direct final rule, DOE has proposed that the standards would become effective on January 1, 2015. (76 FR 26656, May 9, 2011). Use of the final test procedure would also be required on that date.

Issued in Washington, DC, on August 23, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: ASKO Appliances Inc. (Case No. CD–008).

Background

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The current test procedure for clothes dryers is contained in 10 CFR part 430, subpart B, appendix D.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. (10 CFR 430.27(a)(1)) Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. (10 CFR 430.27(b)(1)(iii))

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. (10 CFR 430.27(l)) Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

On June 19, 2013, ASKO filed a petition for waiver from the test procedures applicable to its T744C, T754C, and T794C product models of condensing clothes dryer. The applicable test procedure is contained in 10 CFR part 430, subpart B, appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers. ASKO seeks a waiver from the applicable test procedure for its T744C, T754C, and T794C product models because, ASKO asserts, design characteristics of these models prevent testing according to the currently prescribed test procedure, as described in greater detail in the following paragraph.

In support of its petition, ASKO claims that the current clothes dryer test procedure applies only to vented clothes dryers because the test procedure requires the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condenser clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. ASKO plans to market a condensing clothes dryer for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and condominiums, where construction and building design do not permit the use of external venting.

Assertions and Determinations

ASKO's Petition for Waiver

On June 19, 2013, ASKO filed a petition for waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D for particular models of condensing clothes dryer. On July 10, 2013, DOE published ASKO's petition for waiver and granted ASKO an interim waiver from the current test procedure. (78 FR 41387) DOE did not receive any comments on the AKSO petition. DOE previously granted BSH a waiver from test procedures for two similar condenser clothes dryer models. (76 FR 33271, June 8, 2011) DOE also granted waivers for the same type of clothes dryer to LG Electronics (73 FR 66641, Nov. 10. 2008), Whirlpool Corporation (74 FR 66334, Dec. 15, 2009), General Electric (75 FR 13122, Mar. 18, 2010), and Miele Appliance, Inc. (60 FR 9330, Feb. 17, 1995; 76 FR 17637, Mar. 30, 2011). ASKO claims that its condenser clothes dryers cannot be tested pursuant to the current test procedure and requests that the same waiver granted to other manufacturers be granted for ASKO's T744C, T754C, and T794C models.

Therefore, for the reasons discussed above, and in light of the previous waivers to other manufacturers, DOE grants ASKO's petition for waiver from testing of its T744C, T754C, and T794C condenser clothes dryers.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the ASKO petition for waiver. The FTC staff did not have any objections to granting a waiver to ASKO.

Conclusion

After careful consideration of all the material that was submitted by ASKO

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by ASKO Appliances Inc. (Case No. CD–008) is hereby granted as set forth in the paragraphs below.

(2) ASKO shall not be required to test or rate its T744C, T754C, and T794C condensing clothes dryer models on the basis of the test procedures at 10 CFR part 430, subpart B, appendix D.

(3) This waiver shall remain in effect from the date this decision and order consistent with the provisions of 10 CFR 430.27(m).

(4) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect.

(5) This waiver applies to only those models specifically set out in ASKO's petition. ASKO may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes dryers for which it seeks a waiver from the DOE test procedure. Grant of this petition for waiver also does not release a petitioner from any applicable certification requirements set forth at 10 CFR Part 429.

Issued in Washington, DC, on August 23, 2013.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–21099 Filed 8–28–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD–007]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to BSH Home Appliances Corporation From the Department of Energy Residential Clothes Dryer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CD–007) that grants to BSH Home Appliances Corporation (BSH) a waiver from the DOE clothes dryer test procedure. The waiver pertains to the models of condensing residential clothes dryer specified in BSH's petition. Condensing clothes dryers cannot be tested using the currently applicable DOE test procedure. Under today's decision and order, BSH shall not be required to test and rate its specified models of residential condensing clothes dryer pursuant to the current test procedure.

DATES: This Decision and Order is effective August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. James Silvestro, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 286–4224. Email: *James.Silvestro@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR), Section 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants BSH a waiver from the applicable residential clothes dryer test procedure at 10 CFR part 430 subpart B, appendix D, for the three models of condensing clothes dryer specified it its petition.

DOE notes that it has promulgated a final test procedure for clothes dryers that provides a mechanism for testing condensing clothes dryers. (76 FR 972, Jan. 6, 2011). Use of this test procedure will be required on the compliance date of any amended standards for clothes dryers. DOE has also published a direct final rule establishing amended standards for clothes dryers, which establishes standards for condensing clothes dryers. (76 FR 22454, April 21, 2011).

Absent adverse comment that the Secretary determines may provide a reasonable basis for withdrawal of the direct final rule, DOE has proposed that the standards would become effective on January 1, 2015. (76 FR 26656, May 9, 2011). Use of the final test procedure would also be required on that date.

Issued in Washington, DC, on August 23, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: BSH Home Appliances Corporation (Case No. CD–007).

Background

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The current test procedure for clothes dryers is contained in 10 CFR part 430, subpart B, appendix D.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. (10 CFR 430.27(a)(1)) Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. (10 CFR 430.27(b)(1)(iii))

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. (10 CFR 430.27(l)) Waivers remain in

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

effect pursuant to the provisions of 10 CFR 430.27(m).

On May 10, 2013, BSH filed a petition for waiver from the test procedures applicable to its Bosch WTB86200UC, WTB86201UC, and WTB86202UC product models of condensing clothes dryer. The applicable test procedure is contained in 10 CFR part 430, subpart B, appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers. BSH seeks a waiver from the applicable test procedure for its Bosch WTB86200UC, WTB86201UC, and WTB86202UC product models because, BSH asserts, design characteristics of these models prevent testing in accordance with the currently prescribed test procedure, as described in greater detail in the following paragraph.

In support of its petition, BSH claims that the current clothes dryer test procedure applies only to vented clothes dryers because the test procedure requires the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condenser clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. BSH plans to market a condensing clothes dryer for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and condominiums, where construction and building design do not permit the use of external venting.

Assertions and Determinations

BSH's Petition for Waiver

On May 10, 2013, BSH filed a petition for waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D for particular models of condensing clothes dryer. On June 19, 2013, DOE published BSH's petition for waiver and granted BSH an interim waiver from the current test procedure. (78 FR 36760) DOE did not receive any comments on the BSH petition. DOE previously granted BSH a waiver from test procedures for two similar condenser clothes dryer models. (76 FR 33271, June 8, 2011)) DOE also granted waivers for the same type of clothes dryer to LG Electronics (73 FR 66641, Nov. 10, 2008), Whirlpool Corporation (74 FR 66334, Dec. 15, 2009), General Electric (75 FR 13122, Mar. 18, 2010), and Miele Appliance, Inc. (60 FR 9330, Feb. 17, 1995; 76 FR 17637, Mar. 30, 2011). BSH claims that its condenser clothes dryers cannot be tested pursuant to the current test procedure and requests that the same waiver granted to other manufacturers be granted for BSH's Bosch WTB86200UC, WTB86201UC, and WTB86202UC models.

Therefore, for the reasons discussed above, and in light of the previous waivers to other manufacturers, DOE grants BSH's petition for waiver from testing of its Bosch WTB86200UC, WTB86201UC, and WTB86202UC condenser clothes dryers.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the BSH petition for waiver. The FTC staff did not have any objections to granting a waiver to BSH.

Conclusion

After careful consideration of all the material that was submitted by BSH and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by BSH, Inc. (Case No. CD–007) is hereby granted as set forth in the paragraphs below.

(2) BSH shall not be required to test or rate its Bosch WTB86200UC, WTB86201UC, and WTB86202UC condensing clothes dryer models on the basis of the test procedures at 10 CFR part 430, subpart B, appendix D.

(3) This waiver shall remain in effect from the date this decision and order consistent with the provisions of 10 CFR 430.27(m).

(4) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect.

(5) This waiver applies to only those models specifically set out in BSH's petition. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes dryers for which it seeks a waiver from the DOE test procedure. Grant of this petition for waiver also does not release a petitioner from any applicable certification requirements set forth at 10 CFR Part 429.

Issued in Washington, DC, on August 23, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency Energy Efficiency and Renewable Energy

[FR Doc. 2013–21123 Filed 8–28–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1260–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: 2013 Penalties Assessed Compliance Filing of Colorado Interstate Gas Company, L.L.C.

Filed Date: 8/20/13.

Accession Number: 20130820–5037.

Comments Due: 5 p.m. ET 9/3/13.

Docket Numbers: RP13–1261–000.

Applicants: Texas Eastern Transmission, LP.

Description: Chesapeake 8929510 8–20–2013 Negotiated Rate to be effective 8/20/2013.

Filed Date: 8/20/13.

Accession Number: 20130820–5059.

Comments Due: 5 p.m. ET 9/3/13.

Docket Numbers: RP13–1262–000.

Applicants: Texas Eastern Transmission, LP.

Description: Chesapeake 8929511 8–21–2013 Negotiated Rate to be effective 8/21/2013.

Filed Date: 8/20/13.

Accession Number: 20130820–5060.

Comments Due: 5 p.m. ET 9/3/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 21, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21080 Filed 8–28–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR13–57–000.
Applicants: Enable Oklahoma Intrastate Transmission, LLC.
Description: Tariff filing per 284.123/.224: Revised SOC Applicable to Transportation Services to be effective 8/16/2013.
Filed Date: 8/16/13.
Accession Number: 20130816–5089.
Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: PR13–58–000.
Applicants: Enable Oklahoma Intrastate Transmission, LLC.
Description: Tariff filing per 284.123/.224: Storage Statement of Operating Conditions to be effective 8/16/2013.
Filed Date: 8/16/13.
Accession Number: 20130816–5091.
Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: PR13–59–000.
Applicants: Enable Illinois Intrastate Transmission, LLC.
Description: Tariff filing per 284.123/.224: IIT Name Change Filing to be effective 8/16/2013.
Filed Date: 8/16/13.
Accession Number: 20130816–5134.
Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: PR13–60–000.
Applicants: Enable Illinois Intrastate Transmission, LLC.
Description: Tariff filing per 284.123/.224: Cancellation of SOC to be effective 8/16/2013.
Filed Date: 8/16/13.
Accession Number: 20130816–5142.
Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: RP13–1263–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Tenaska Negotiated Rate LPS RO to be effective 8/22/2013.
Filed Date: 8/22/13.
Accession Number: 20130822–5035.
Comments Due: 5 p.m. ET 9/3/13.

Docket Numbers: RP13–1264–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Tenaska LPS RO to be effective 8/22/2013.
Filed Date: 8/22/13.
Accession Number: 20130822–5050.
Comments Due: 5 p.m. ET 9/3/13.

Docket Numbers: RP13–1265–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Macquarie Negotiated Rate LPS RO to be effective 8/22/2013.
Filed Date: 8/22/13.
Accession Number: 20130822–5075.
Comments Due: 5 p.m. ET 9/3/13.

Docket Numbers: RP13–1266–000.
Applicants: Portland Natural Gas Transmission System.
Description: Contractual ROFR to be effective 9/23/2013.
Filed Date: 8/23/13.
Accession Number: 20130823–5017.
Comments Due: 5 p.m. ET 9/4/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–1254–001.
Applicants: Enable Gas Transmission, LLC.
Description: Name Change Filing Amendment to be effective 8/16/2013.
Filed Date: 8/22/13.
Accession Number: 20130822–5116.
Comments Due: 5 p.m. ET 9/3/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 23, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21081 Filed 8–28–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators; Supplemental Notice of Technical Conference

As announced in the Notice issued on June 17, 2013, and the Supplemental Notice issued on July 19, 2013, the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference on September 25, 2013 from 9:00 a.m. to approximately 5:00 p.m., to consider how current centralized capacity market rules and structures in the regions served by ISO New England Inc. (ISO–NE), New York Independent System Operator, Inc. (NYISO), and PJM Interconnection, L.L.C. (PJM) are supporting the procurement and retention of resources necessary to meet future reliability and operational needs.[1] The conference will be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This conference is free of charge and open to the public. Commission members may participate in the conference.

A final agenda for this conference, including speakers, is attached.

The first session will provide an opportunity for each of the eastern Regional Transmission Organizations (RTOs)/Independent System Operators (ISOs) to give a 15 minute presentation. The Independent Market Monitors will then be provided ten minutes to provide an independent assessment of each market.

In sessions two, three and four, panelists will not give opening remarks; instead, they will respond to questions posed by Commissioners and staff. Those panelists are required to file written statements by Monday, September 9, 2013. These statements will be available prior to the conference on the Commission's Web site, *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=6944&CalType=%20&CalendarID=116&Date=09/25/2013&View=Listview.*

Each RTO/ISO will have a representative available throughout the day to answer any technical questions. RTO/ISO representatives will also have an opportunity to respond to ideas

[1] While the Commission recognizes that other regions are considering similar issues, this technical conference will focus solely on the centralized capacity markets in the ISO–NE, NYISO, and PJM regions. The Commission may convene conference(s) on capacity market issues in other regions at other times.

presented in the final session regarding considerations for the future.

Following the conference, the Commission plans to issue a Notice with follow-on questions for public comment.

In addition to this Supplemental Notice, staff is issuing in this docket a Staff Report, "Centralized Capacity Market Design Elements." In the report, staff examines a set of design elements present in the centralized capacity markets operated by ISO–NE, NYISO and PJM. The report summarizes the approaches taken by each of these RTOs/ISOs with respect to these design elements and discusses the impact particular market design choices can have on the procurement of capacity resources. This review of the mechanics of current market operations is intended to provide a common foundation for broader discussions regarding the operation of the eastern RTO/ISO centralized capacity markets. The Staff Report can be found on the Commission's Web site, *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=6944&CalType=%20&CalendarID=116&Date=09/25/2013&View=Listview.*

The technical conference will be transcribed. Additionally, there will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference, but not participate. Anyone with Internet access who wants to listen to the conference can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating the technical conference in the Calendar. The technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.[2]

While this conference is not for the purpose of discussing specific cases, we note that the discussions at the conference may address matters at issue in the following Commission proceeding(s) that are either pending or within their rehearing period:

ISO–NE:	
ISO New England Inc	Docket No. ER13–2149
ISO New England Inc	Docket No. ER13–2110
ISO New England Inc	Docket No. ER13–1880
ISO New England Inc	Docket No. ER13–1877
ISO New England Inc	Docket No. ER13–1851
ISO New England Inc	Docket No. ER13–1742
Dominion Energy Marketing, Inc	Docket No. ER13–1291
ISO New England Inc	Docket No. ER12–1627
ISO New England Inc	Docket No. ER12–953
Dominion Energy Marketing, Inc	Docket No. EL13–72
New Englond Power Generators Associotion v. *ISO New Englond Inc*	Docket No. EL13–66
New Englond States Committee on Electricity v. *ISO New Englond Inc*	Docket No. EL13–34
NYISO:	
New York Independent System Operator, Inc	Docket No. ER13–1380
New York Independent System Operator, Inc	Docket No. ER12–2414
New York Independent System Operator, Inc	Docket No. ER12–360
New York Independent System Operator, Inc	Docket No. ER10–2371
Independent Power Producers of New York, Inc. v. *New York Independent System Operotor, Inc*	Docket No. EL13–62
Hudson Tronsmission Portners, LLC v. *New York Independent System Operotor, Inc*	Docket No. EL12–98
Astorio Generoting Company, L.P., et al. v. *New York Independent System Operotor, Inc*	Docket No. EL11–50
Astorio Generoting Company, L.P., et al. v. *New York Independent System Operotor, Inc*	Docket No. EL11–42
New York Independent System Operator, Inc	Docket No. EL07–39
PJM:	
PJM Interconnection, L.L.C	Docket No. ER13–2140
PJM Interconnection, L.L.C	Docket No. ER13–2108
PJM Interconnection, L.L.C	Docket No. ER13–535
Viridity Energy, Inc v. *PJM Interconnection, L.L.C*	Docket No. EL12–54

Information on the technical conference will be posted on the Commission's Web site, *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=6944&CalType=%20&CalendarID=116&Date=09/25/2013&View=Listview,* prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the technical conference, please contact:

Shiv Mani (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8240, *Shiv.Mani@ferc.gov.*

Kate Hoke (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8404, *Katheryn.Hoke@ferc.gov.*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov.*

Dated: August 23, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretory.

[FR Doc. 2013–21106 Filed 8–28–13; 8:45 am]

BILLING CODE 6717–01–P

[2] The webcast will continue to be available on the Calendar of Events on the Commission's Web site *www.ferc.gov* for three months after the conference.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

Lock+ Hydro Friends Fund XXX, LLC.	Project No. 13625–003
FFP Project 121, LLC.	Project No. 14504–000

On August 21, 2013, the Commission held a drawing to determine priority between competing preliminary permit applications with identical filing times. In the event that the Commission concludes that neither of the applicants' plans is better adapted than the other to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 121, LLC Project No. 14504–000
2. Lock+ Hydro Friends Fund XXX, LLC Project No. 13625–003

Dated: August 22, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21057 Filed 8–28–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM12–3–000]

Revisions to Electric Quarterly Report Filing Process; Notice of Extended Availability of Sandbox Electronic Test Site

Take notice that the opportunity to use the Sandbox Electronic Test Site (ETS) has been extended until September 15, 2013. The ETS including a web interface and direct XML submission is available on the Commission's Web site at *http://www.ferc.gov/docs-filing/eqr.asp*. Instructions are also available within the ETS.

Order No. 770 [1] revised the method for making Electric Quarterly Report (EQR) filings. The ETS will be ended on September 15 so that the system may be finalized and put into production for filing beginning on October 1, 2013.

Staff encourages users to create test accounts and submit simulated filings as often as possible while the sandbox is available. Staff invites users to email comments and questions concerning the ETS to *eqr@ferc.gov*. Please include "Sandbox Electronic Test Site" in the subject line of any such emails.

Further, market participants are encouraged to sign up for the Commission's EQR RSS feed at *http://www.ferc.gov/xml/eqr.xml* to ensure timely receipt of new and additional information concerning the filing of EQRs. Such information often will not be conveyed through notices such as this one.

Dated: August 23, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–21107 Filed 8–28–13; 8:45 am]

BILLING CODE 6717–01–P

[1] *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, 77 FR 71288 (Nov. 30, 2012), FERC Stats. & Regs. ¶ 31,338 (2012).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9900–42–ORD; Docket ID No. EPA–HQ–ORD–2013–0620]

Notice of Workshop and Call for Information on Integrated Science Assessment for Oxides of Nitrogen and Oxides of Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; call for information.

SUMMARY: The U.S. EPA Office of Research and Development's National Center for Environmental Assessment (NCEA) is preparing an Integrated Science Assessment (ISA) as part of the review of the secondary National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X). This ISA is intended to update the scientific assessment presented in the *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Ecological Criteria* (EPA 600/R–08/082F), published in December 2008. Interested parties are invited to assist the EPA in developing and refining the scientific information base for the review of the secondary NO_X and SO_X NAAQS by submitting research studies that have been published, accepted for publication, or presented at a public scientific meeting.

The EPA is also announcing that a workshop entitled "*Workshop to Discuss Policy-Relevant Science to Inform EPA's Review of the Secondary NO_X and SO_X NAAQS*" is being organized by NCEA and the EPA Office of Air and Radiation's Office of Air Quality Planning and Standards (OAQPS). The workshop will be held October 1 to 3, 2013, in Research Triangle Park, North Carolina. The workshop will be open to attendance by interested public observers on a first-come, first-served basis up to the limits of available space.

DATES: The workshop will be held October 1 to 3, 2013. All communications and information submitted in response to notice of the workshop should be received by EPA by September 27, 2013.

ADDRESSES: The workshop will be held at U.S. EPA, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. An EPA contractor, ICF International, is providing logistical support for the workshop. Please register by going to *https://sites.google.com/site/soxnoxkickoffworkshop/*. The pre-registration deadline is September 27, 2013. Please direct questions regarding workshop registration or logistics to Courtney Skuce at *EPA_NAAQS_Workshop@icfi.com* or by phone at (919) 293–1660. For specific questions regarding technical aspects of the workshop see the section of this notice entitled **FOR FURTHER INFORMATION CONTACT.**

Information in response to the call for information may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For details on the period for submission of research information from the public, contact the Office of Research and Development (ORD) Docket; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov*. For technical information, contact Tara Greaver, Ph.D., NCEA, telephone: (919) 541–5762; facsimile: (919) 541–2435; or email: *greaver.tara@epa.gov* or Ginger Tennant, OAQPS, telephone: (919) 541–4072 or email: *tennant.ginger@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Project

Section 108(a) of the Clean Air Act directs the Administrator to issue "air quality criteria" for certain air pollutants. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare, which may be expected from the presence of such pollutant in the ambient air. . . ." Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act

subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

NO_X and SO_X are two of six "criteria" pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA. The ISA, along with additional technical and policy assessments conducted by OAQPS, form the basis for EPA decisions on the adequacy of existing NAAQS and the appropriateness of new or revised standards.

At the start of a NAAQS review, EPA issues an announcement of the review and notes the initiation of the development of the ISA. At that time, EPA also issues a request that the public submit scientific literature that they want to bring to the attention of the Agency for consideration in the review process. The Clean Air Scientific Advisory Committee (CASAC), an independent scientific advisory committee mandated by the Clean Air Act, conducts independent expert scientific review of EPA's draft ISAs. As the process proceeds, the public will have opportunities to review and comment on draft NO_X and SO_X ISAs. These opportunities will also be announced in the **Federal Register**.

For the review of the NO_X and SO_X NAAQS being initiated by this notice, the Agency is interested in obtaining additional new information on how gas-phase and deposition of these pollutants affects all ecosystem types in the US. Studies of particular interest are those evaluating the effects of exposure to gas-phase or deposition of NO_X and SO_X on laboratory plants and/or animals, field studies on ecosystem structure and/or function, including but not limited to studies on biogeochemistry, biodiversity, population and/or community structure. Deposition of NO_X and SO_X contribute to deposition of total nitrogen (N) and total sulfur (S) categories. General ecological effects due to deposition are ecosystem acidification (N + S deposition), nutrient enrichment (N deposition), eutrophication (N deposition) and sulfur induced mercury methylation (S deposition). EPA also seeks recent information in other areas of NO_X and SO_X research such as chemistry and physics, sources and emissions, analytical methodology, transport and transformation in the environment, and ambient concentrations in addition to information on reduced N and organic N to understand how NO_X contributes to total N loading. This and other selected literature relevant to a review of the NAAQS for NO_X and SO_X will be assessed in the forthcoming NO_X and SO_X ISA.

As part of this review of the NO_X and SO_X NAAQS, EPA intends to sponsor a workshop on October 1 to 3, 2013, to inform the planning for EPA's review of the secondary (welfare-based) NAAQS for NO_X and SO_X. Consistent with the NAAQS review process,[1] the workshop will provide an opportunity to highlight key policy-relevant science issues around which EPA would structure the review. In workshop discussions, EPA and experts from other organizations will be expected to highlight significant new and emerging NO_X and SO_X research and make recommendations to the Agency regarding the design and scope of this review. The goal of the workshop is to ensure that this review focuses on the key policy-relevant issues and considers the most meaningful new science to inform our understanding of these issues. Workshop discussions will provide important input as EPA considers the appropriate design and scope of major elements of the review that will inform the Agency's policy assessment. These elements include an integrated review plan (IRP) highlighting the key policy-relevant issues; an integrated science assessment; and a risk and exposure assessment. We intend that workshop discussions will build upon three prior assessments or events (please see *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr.html* to obtain a copy of these and other related documents):

1. *Secondary National Ambient Air Quality Standards for Nitrogen Dioxide; Final Rule (40 CFR Part 50 [EPA–HQ–OAR–2007–1145], April 3, 2012).* The preamble to the final rule included detailed discussions of policy-relevant issues central to the last review.

2. *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Ecological Criteria (EPA 600/R–08/082F, December 2008).*

3. *Risk and Exposure Assessment to Support the Review of the NO_2 Primary National Ambient Air Quality Standard (EPA 452/R–09/008a, September 2009).*

Based in large part on the input received during this workshop, EPA will develop a draft IRP that will outline the schedule, process, and approaches for evaluating the relevant scientific information, assessing risks to the environment and addressing the key policy-relevant issues. The CASAC will be asked to review the draft integrated review plan, and the public will have the opportunity to comment on it as well. The final integrated review plan will be used as a framework to guide the review.

[1] More information on the NAAQS review process is provided at: *http://www.epa.gov/ttn/naaqs/.*

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0620 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Office of Research and Development (ORD) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0620. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless

you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

Docket: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: August 21, 2013.

Debra B. Walsh,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2013–21025 Filed 8–28–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2013–13]

Filing Dates for the Louisiana Special Elections in the 5th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Louisiana has scheduled a Special General Election on October 19, 2013, to fill the U.S. House of Representatives seat vacated by Representative Rodney Alexander. Under Louisiana law, a majority winner in an open special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on November 16, 2013, between the top two vote-getters.

Committees participating in the Louisiana special elections are required to file pre-and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Louisiana Special General and Special Runoff Elections shall file a 12-day Pre-General Report on October 7, 2013; a Pre-Runoff Report on November 4, 2013; and a Post-Runoff Report on December 16, 2013. (See chart below for the closing date for each report).

If only one election is held, all principal campaign committees of candidates in the Special General Election shall file a 12-day Pre-General Report on October 7, 2013; and a Post-General Report on November 18, 2013. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2013 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Louisiana Special General or Special Runoff Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Louisiana Special General or Runoff Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Louisiana Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml*.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,100 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v) and (b).

CALENDAR OF REPORTING DATES FOR LOUISIANA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
IF ONLY ONE ELECTION IS HELD, QUARTERLY FILING COMMITTEES INVOLVED IN THE SPECIAL GENERAL (10/19/13) MUST FILE:			
Pre-General	09/29/13	10/04/13	10/07/13
October Quarterly		[2]	
Post-General	11/08/13	11/18/13	11/18/13
Year-End	12/31/13	01/31/14	01/31/14
IF ONLY ONE ELECTION IS HELD, SEMI-ANNUAL FILING COMMITTEES INVOLVED IN THE SPECIAL GENERAL (10/19/13) MUST FILE:			
Pre-General	09/29/13	10/04/13	10/07/13
Post-General	11/08/13	11/18/13	11/18/13
Year-End	12/31/13	01/31/14	01/31/14
IF TWO ELECTIONS ARE HELD, QUARTERLY FILING COMMITTEES INVOLVED IN *ONLY* THE SPECIAL GENERAL (10/19/13) MUST FILE:			

CALENDAR OF REPORTING DATES FOR LOUISIANA SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Pre-General	09/29/13	10/04/13	10/07/13
October Quarterly		[2]	
Year-End	12/31/13	01/31/14	01/31/14
IF TWO ELECTIONS ARE HELD, SEMI-ANNUAL FILING COMMITTEES INVOLVED IN *ONLY* THE SPECIAL GENERAL (10/19/13) MUST FILE:			
Pre-General	09/29/13	10/04/13	10/07/13
Year-End	12/31/13	01/31/14	01/31/14
IF TWO ELECTIONS ARE HELD, QUARTERLY FILING COMMITTEES INVOLVED IN THE SPECIAL GENERAL (10/19/13) AND SPECIAL RUNOFF (11/16/13) MUST FILE:			
Pre-General	09/29/13	10/04/13	10/07/13
Pre-Runoff	10/27/13	11/01/13	11/04/13
Post-Runoff	12/06/13	12/16/13	12/16/13
Year-End	12/31/13	01/31/14	01/31/14
IF TWO ELECTIONS ARE HELD, SEMI-ANNUAL FILING COMMITTEES INVOLVED IN BOTH THE SPECIAL GENERAL (10/19/13) AND SPECIAL RUNOFF (11/16/13) MUST FILE:			
Pre-General	09/29/13	10/04/13	10/07/13
Pre-Runoff	10/27/13	11/01/13	11/04/13
Post-Runoff	12/06/13	12/16/13	12/16/13
Year-End	12/31/13	01/31/14	01/31/14
IF TWO ELECTIONS ARE HELD, SEMI-ANNUAL FILING COMMITTEES INVOLVED IN *ONLY* THE SPECIAL RUNOFF (11/16/13) MUST FILE:			
Pre-Runoff	10/27/13	11/01/13	11/04/13
Post-Runoff	12/06/13	12/16/13	12/16/13
Year-End	12/31/13	01/31/14	01/31/14

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.
[2] Waived.

On behalf of the Commission.

Dated: August 22, 2013.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2013–21050 Filed 8–28–13; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011689–015.

Title: Zim/CSCL Slot Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd.; China Shipping Container Line Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party).

Filing Party: Mark E. Newcomb, Zim American Integrated Shipping Services Company, Inc.; 5801 Lake Wright Drive, Norfolk, VA 23508.

Synopsis: The amendment would revise the amount of space chartered and the services on which the space is chartered under the agreement, and would change the terms under which the agreement can be terminated.

Agreement No.: 012217.

Title: HSDG/HLAG Space Charter Agreement.

Parties: Hamburg Sud and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Hamburg Sud to charter space to Hapag-Lloyd in the trade between the U.S. Atlantic Coast, and ports in Argentina and Brazil.

Agreement No.: 012218.

Title: Simatech/Hapag-Lloyd Space Charter Agreement.

Parties: Simatech Americas, Inc. and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Simatech to charter space to Hapag-Lloyd in the trade between Miami, FL, and ports in Honduras and Guatemala.

Agreement No.: 201179–002.

Title: Lease and Operating Agreement between PRPA and Growmark, Inc.

Parties: Growmark, Inc. and The Philadelphia Regional Port Authority (PRPA).

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue NW., 10th Floor; Washington, DC 20036.

Synopsis: The amendment sets forth specific uses for the facilities operated under the agreement and specifies the

cargo categories to be handled under the agreement.

By Order of the Federal Maritime Commission.

Dated: August 23, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–21041 Filed 8–28–13; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

1–800 Shipping, Inc. (OFF), 700 W. Hillsboro Blvd. Suite 3–204, Deerfield Beach, FL 33441, Officers: Thomas Jacob, Director (QI), Kristen Obst, Director, Application Type: New OFF.

American Transit Shipping Inc (NVO & OFF), 3122 Fulton Street, Ground Floor, Brooklyn, NY 11208, Officers: Chukwuma I. Oka, President (QI), Ugochinyere I. Oka, Secretary, Application Type: New NVO & OFF License.

Aprile USA, Inc. (NVO & OFF), 1370 Broadway, Suite 1400, New York, NY 10018, Officers: Satish Arora, Assistant Secretary (QI), Carlo Pozzi, President, Application Type: Add OFF Service.

Armada Services, LLC (NVO & OFF), 519 S. Ellwood Avenue, 2nd Floor, Baltimore, MD 21224, Officers: Stephen R. Brodie, Chief Export Officer (QI), Katrina N. Dill, Managing Director, Application Type: New NVO & OFF License.

Nancy S. Frederick dba Action Worldwide Cargo Services (NVO), 16511 Hedgecroft Drive, Suite 204, Houston, TX 77060, Officer: Nancy L. Frederick, President (QI), Application Type: Business Structure change to the corporation, Action Worldwide Cargo Services Inc.

Oriental Cargo Forwarders, LLC (NVO), 2720 E. Plaza Blvd., Suite T, National City, CA 91950, Officers: Alexander Y. Tiu, Vice Manager (QI), Emma Salameh, Managing Member, Application Type: New NVO License.

Portos Logistics, LLC (NVO & OFF), 5516 NW 72nd Avenue, Suite 5516, Miami, FL 33166, Officer: Jesus A. Herrera, Manager Member (QI), Application Type: New NVO & OFF License.

Shipping International, Inc. (NVO), 975–66th Avenue, Oakland, CA 94621, Officers: Mehdi Bolourchi, President (QI), Jafar Bolourchi, Vice President, Application Type: New NVO License.

Worldwide Cargo Express, Inc. (OFF), 76 West 13775 South, Suite 8, Draper, UT 84020, Officers: Dana M. Ferguson, Treasurer (QI), Necia G. Clark-Mantle, President, Application Type: Name Change to Worldwide Cargo, Inc.

By the Commission.

Dated: August 22, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–21042 Filed 8–28–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 016959N.
Name: Francis Mendez Alvarez dba Servicios Hondurenos.
Address: 1200 Labco Street, Houston, TX 77029.
Date Reissued: July 13, 2013.

License No.: 017531F.
Name: New York Logistic Services, Inc.
Address: 1308 Merrywood Drive, Edison, NJ 08817.
Date Reissued: July 16, 2013.

License No.: 018392N.
Name: Broom U.S.A., Inc. dba Transcontinental Logistics Neutral 3 PL.
Address: 2293 NW. 82nd Avenue, Doral, FL 33122.
Date Reissued: June 17, 2013.

License No.: 018461N.
Name: Select Aircargo Services, Inc. dba PAC International Logistics Company.
Address: 12801 South Figueroa Street, Los Angeles, CA 90061.
Date Reissued: July 10, 2013.

License No.: 019364N.
Name: New Life Health Care Services, LLC dba New Life Marine Services.
Address: 3527 Brackenfern Road, Katy, TX 77449.
Date Reissued: June 09, 2013.

License No.: 023062F.
Name: A & M Ocean Machinery, Inc.
Address: 9725 Fontainebleau Blvd., Suite 103, Miami, FL 33172.
Date Reissued: July 04, 2013.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–21039 Filed 8–28–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations and Terminations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked or terminated for the reason shown pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 002370NF.
Name: Westwind Maritime International, Inc.
Address: 1440 N. Mittel, Suite E, Wood Dale, IL 60191.
Date Revoked: June 1, 2013.
Reason: Voluntary Surrender of License.

License No.: 016914F.
Name: Air Sea Cargo Network, Inc.
Address: 7982 Capwell Drive, Oakland, CA 94521.
Date Revoked: June 14, 2013.
Reason: Failed to maintain a valid bond.

License No.: 021554F.
Name: Momentum Transportation—USA, Inc.
Address: 4901 Belfort Road, Suite 100, Jacksonville, FL 32256.
Date Revoked: July 25, 2013.
Reason: Voluntary Surrender of License.

License No.: 024209NF.
Name: Suncoast Ocean Lines, LLC.
Address: 3426 Hancock Bridge Parkway, Suite 305, North Fort Myers, FL 33903–7077.
Date Revoked: August 6, 2013.
Reason: Voluntary Surrender of License.

License No.: 024214NF.
Name: Greymar International Freight LLC.
Address: 8579 NW 72nd Street, Miami, FL 33166.
Date Revoked: July 8, 2013.

Reason: Voluntary Surrender of License.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–21033 Filed 8–28–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 13, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Jane Anne Ferrier, individually, and as trustee and sole beneficiary of the Ferrier Family Trust 2; Thomas L. Ferrier and Jane A. Ferrier, all of San Diego, California, individually and as trustees and beneficiaries of the Ferrier Family Trust 3; Sharon F. Risse, San Diego, California, individually and as trustee and sole beneficiary of the Sharon Risse Trust; Andrew P. Ferrier,* San Francisco, California, individually and as trustee and sole beneficiary of the Andrew Ferrier Trust; all together a group acting in concert, to acquire voting shares of First Community Financial Corporation, and thereby indirectly acquire voting shares of First National Bank of Mifflintown, both in Mifflintown, Pennsylvania.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Jay Douglas Bergman,* Joliet, Illinois; to acquire voting shares of Community Holdings Corp., Palos Hills, Illinois, and thereby indirectly acquire voting shares of Firstsecure Bank and Trust Company, Palos Hills, Illinois.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Clea Alsip, Brooklyn, New York; Patti Janese Hager, Edmond, Oklahoma; Zela Mae Hanson, Tulsa, Oklahoma; Patricia Ann McCortney, Farmers Branch, Texas; Vicki Lynn Patton and Jerry Scott Grandchildren's Trust, both of Ada, Oklahoma; Kamberly Dawn or Richard Clay Skoch, Yukon, Oklahoma; and Tammy Key,* Sulphur, Oklahoma, as shareholders and members to the Vision Bancshares, Inc. Voting Agreement; to retain voting shares of Vision Bancshares, Inc., and thereby indirectly retain voting shares of Vision Bank, National Association, both in Ada, Oklahoma.

Board of Governors of the Federal Reserve System, August 26, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–21100 Filed 8–28–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *CenterState Banks, Inc.,* Davenport, Florida; to merge with Gulfstream Bancshares, Inc., and thereby indirectly acquire Gulfstream Business Bank, both in Stuart, Florida.

Board of Governors of the Federal Reserve System, August 26, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–21101 Filed 8–28–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9348]

Phoebe Putney Health System, Inc., et al.; Analysis of Proposed Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 23, 2013.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/phoebeputneyhospconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Phoebe Putney, Docket No. 9348" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/phoebeputneyhospconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Maria M. DiMoscato (202–326–2315), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 3.25, 16 CFR 3.25, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 22, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper: For the Commission to consider your comment, we must receive it on or before September 23, 2013. Write "Phoebe Putney, Docket No. 9348" on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/phoebeputneyhospconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write "Phoebe Putney, Docket No. 9348" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 23, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Respondents Phoebe Putney Health System, Inc. ("PPHS"), Phoebe Putney Memorial Hospital, Inc. ("PPMH"), Phoebe North, Inc. ("Phoebe North") (collectively "Phoebe Putney"), HCA Inc. ("HCA"), Palmyra Park Hospital, Inc. ("Palmyra"), and the Hospital Authority of Albany-Dougherty County ("Hospital Authority") in settlement of administrative litigation challenging the Hospital Authority's acquisition of Palmyra from HCA and subsequent transfer of all management control of Palmyra to Phoebe Putney under a long-term lease arrangement (the "Transaction").

The circumstances in this matter are highly unusual and the Commission's discontinuation of litigation and settlement of this case on the proposed terms are acceptable to the Commission only under the unique circumstances presented here. In particular, as described further below, the Commission believes that, assuming a finding of liability following a full merits trial and appeals, the legal and practical challenges presented by Georgia's certificate of need ("CON") laws and regulations would very likely prevent a divestiture of hospital assets from being effectuated to restore competition. The Commission has declined to seek price cap or other non-structural relief, as such remedies are typically insufficient to replicate pre-merger competition, often involve monitoring costs, are unlikely to address significant harms from lost quality competition, and may even dampen incentives to maintain and improve healthcare quality.

Accordingly, the proposed Consent Agreement, among other things, contains for settlement purposes a stipulation from Respondents Phoebe Putney and Hospital Authority that the effect of the consummated Transaction may be substantially to lessen competition within the relevant service and geographic markets alleged in the Administrative Complaint dated April 20, 2011 ("Complaint"). The Consent Agreement also requires Respondents Phoebe Putney and Hospital Authority to provide the Commission prior notice of any acquisition of certain healthcare providers in the six-county area around Albany, Georgia, including other general acute-care hospitals, inpatient and outpatient facilities, and physician practices with five (5) physicians or more. Finally, the Consent Agreement restricts Respondents Phoebe Putney and Hospital Authority from raising any objections to or negative comments about CON applications for general acute-care hospitals in the six-county area surrounding Albany, Georgia. Additionally, the Consent Agreement requires Phoebe Putney and the Hospital Authority to provide copies of

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

any objections they file in connection with a CON application for an inpatient or outpatient clinic providing any of the services provided by Phoebe Putney or the Hospital Authority in the six-county area around Albany, Georgia within five (5) days of its submission to the Georgia Department of Community Health ("DCH").

The Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final and issue its Decision and Order ("Order").

II. The Parties

PPHS is a non-profit Georgia corporation consisting of several hospitals and other health care facilities in southwest Georgia with its principal place of business located at 417 Third Avenue, Albany, Georgia 31701. In 2011, total annual patient revenues for PPHS at all of its facilities were over $1.6 billion. PPMH is a non-profit Georgia corporation, wholly-owned by PPHS, which operates a 443-bed general acute-care hospital with its principal place of business located at 417 Third Avenue, Albany, Georgia 31701. Opened in 1911, PPMH offers a full range of general acute-care hospital services, as well as emergency care services, tertiary care services, and outpatient services.

Respondent Hospital Authority is organized and exists pursuant to the Georgia Hospital Authorities Law, O.C.G.A. sections 31–7–70 et seq., and maintains its principal place of business at 417 Third Avenue, Albany, Georgia 31701. The Hospital Authority is composed of nine volunteer members appointed to five-year terms by the Dougherty County Commission, and has no employees, no staff, and no budget. Since 2012, the Hospital Authority holds title to both PPMH and the former Palmyra assets (now known as Phoebe North) and has entered into a single, long-term lease covering both of these facilities with PPMH at the rate of $1 per year.

HCA, a Delaware for-profit corporation, is one of the leading health care services companies in the United States with its principal place of business located at One Park Plaza, Nashville, Tennessee 37203. As of December 31, 2012, HCA operated 162 hospitals, comprised of 156 general acute-care hospitals; five psychiatric hospitals; and one rehabilitation hospital. In addition, HCA operates 112 freestanding surgery centers. HCA's facilities are located in 20 states and England. Prior to the acquisition, Palmyra, a 248-bed general acute-care hospital located 1.6 miles from PPMH, was owned and operated by HCA. Palmyra was a Georgia corporation with its principal place of business at 2000 Palmyra Road, Albany, Georgia 31701. Opened in 1971, Palmyra provided a wide range of general acute-care services.

III. The Acquisition

The Commission issued its Complaint in April 2011 charging that the Transaction violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. 45, by lessening competition for the provision of inpatient general acute-care hospital services sold to commercial health plans in Albany and the surrounding six-county area. The Commission also filed a complaint for temporary and preliminary relief, pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), and Section 16 of the Clayton Act, 15 U.S.C. 26, in the U.S. District Court for the Middle District of Georgia. On June 27, 2011, U.S. District Court Judge W. Louis Sands granted the defendants' motion to dismiss, holding that the state action doctrine immunized the Transaction from federal antitrust scrutiny. On appeal by the Commission, the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's dismissal on state action grounds, although agreeing that, "on the facts alleged, the joint operation of [PPMH] and Palmyra would substantially lessen competition or tend to create, if not create, a monopoly." The Court of Appeals dissolved its injunction pending appeal, and the Transaction was consummated on December 15, 2011. Subsequently, the Georgia DCH granted Phoebe Putney's request for a new, single license covering both Albany hospitals, PPMH and Palmyra, effective August 1, 2012.

Seeking judicial review of the Eleventh Circuit's ruling, the Commission filed a petition for certiorari, which the U.S. Supreme Court granted on June 25, 2012. On February 19, 2013, in a unanimous decision, the Court reversed the judgment of the Eleventh Circuit, holding that state action did not immunize the Transaction, and remanded the case for further proceedings below. The Commission thereafter sought a stay of integration and other preliminary relief in the federal district court, and also lifted its stay of administrative proceedings and scheduled a plenary hearing to commence on August 5, 2013, pursuant to which Complaint Counsel and Respondents engaged in discovery over the antitrust merits of the case. On June 10, 2013, the parties filed a joint motion to withdraw the matter from adjudication for settlement purposes, which was granted by the Commission on June 24, 2013.

IV. The Complaint

The Complaint alleges that the Transaction would reduce competition substantially in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. 45, with the likely effect of decreasing quality of care and increasing prices for general acute-care hospital services charged to commercial health plans. The alleged relevant product market is general acute-care hospital services sold to commercial health plans. The alleged relevant geographic market is the six-county area surrounding Albany, Georgia.

The Complaint alleges that the Transaction was essentially a merger-to-monopoly. PPMH and Palmyra were the only general acute-care hospitals in Albany, Georgia. The only other hospital in the six-county area surrounding Albany, Georgia, is Mitchell County Hospital, a 25-bed critical-access hospital in Camilla, Georgia, about 31 miles away. The Complaint alleges that, through the Transaction, Phoebe Putney acquired a post-merger market share of approximately 86%, and that the post-merger HHI is 7,453, with a change from the pre-merger HHI of 1,675. This market concentration far exceeds the thresholds set forth in the Horizontal Merger Guidelines and creates a presumption that the Transaction created or enhanced market power. In addition, the Complaint alleges uniquely close, direct, and substantial pre-merger competition between Phoebe Putney and Palmyra, confirming the likelihood of adverse competitive effects resulting from the Transaction.

Entry into the relevant market is difficult. Not only is the construction of a new general acute-care hospital extremely expensive and time-consuming, but it is also subject to CON regulation in Georgia. Any person wishing to build a new hospital in the relevant geographic market would need approval from the Georgia DCH. Such an application would face opposition from any hospital in the relevant

market, such as Phoebe Putney, and would likely be denied by DCH due to the lack of need as defined by DCH's strict criteria, as discussed further below. As a result, new entry sufficient to achieve a significant market impact within two years is highly unlikely.

V. The Proposed Consent Agreement

Georgia's CON statutes and regulations effectively prevent the Commission from effectuating a divestiture of either hospital in this case. As mentioned above, following the consummation of the Transaction, Phoebe Putney applied for and received a single license authorizing it to operate the formerly-separate hospitals as a single hospital with two campuses. The Georgia DCH issued Phoebe Putney's new license and revoked the two separate licenses that previously covered PPMH and Palmyra. Georgia's CON laws preclude the Commission from re-establishing the former Palmyra assets as a second competing hospital in Albany, because such relief would require: (1) the re-division of the single state-licensed hospital into two separate hospitals; and (2) the transfer of one of those hospitals from the Hospital Authority to a new owner. Either one of those steps is independently sufficient to require CON approval from DCH, which, as discussed further below, would not be forthcoming.

DCH has no statutory authority to revoke Phoebe Putney's current single-hospital license on the basis that its acquisition of Palmyra was anticompetitive. DCH may only revoke a health care facility's license if the facility "violates any of [DCH's] rules and regulations" or does not meet DCH's "quality standards" for "clinical service." Such circumstances do not exist here.

Moreover, the divestiture of either hospital from the Hospital Authority to a proposed buyer would trigger the need for CON approval from DCH. A CON is required for "[a]ny expenditure by or on behalf of a health care facility in excess of $2.5 million . . . except expenditures for acquisition of an existing health facility not owned or operated . . . by or on behalf of a hospital authority." To gain CON approval, the CON applicant must prove both that: (a) there is an "unmet area need" justifying a second Dougherty County hospital; and (b) establishing such a facility would not have an adverse impact on the patient volume and revenue of other hospitals in the same state health planning area. Under Georgia's mandatory need formulas, there currently are hundreds of surplus hospital beds in Albany, Georgia. As such, a new buyer could not prove unmet need in the Albany area as required by Georgia law to justify issuance of a CON.

An applicant seeking a CON for a hospital within the same state health planning area as an existing safety-net hospital, such as PPMH, must also prove that it will not have a detrimental market share or "payer mix" impact on that existing hospital. An adverse impact will be determined if, based on projected utilization, the applicant facility would reduce the utilization of the existing safety-net hospital by ten percent or more. The CON rules are even more protective of teaching hospitals, such as PPMH, requiring as a precondition to issuance of a CON that the applicant demonstrate that an additional hospital will not reduce the utilization of an existing teaching hospital in the planning area by even five percent.

Finally, Georgia courts have consistently construed exemptions to the CON requirements narrowly, and held that DCH lacks discretion to grant exemptions not clearly and expressly conferred by statute.

The proposed Consent Agreement contains a stipulation by Phoebe Putney and the Hospital Authority that, solely for settling this matter, the effect of the Transaction may be substantially to lessen competition within the relevant service and geographic markets alleged in the Complaint. In addition to routine reporting and compliance requirements, the proposed Consent Agreement contemplates certain restrictions on Phoebe Putney and the Hospital Authority discussed below.

A. Prior Notice of Acquisitions

First, for the next ten (10) years, Phoebe Putney and the Hospital Authority must give the Commission prior notice for acquisitions of certain healthcare providers in the six-county area surrounding Albany, Georgia. Under the Order, Phoebe Putney and the Hospital Authority are required to give the Commission thirty (30) days advance notice of a proposed acquisition that is covered by the Order but not subject to the Hart-Scott-Rodino Act ("HSR Act"). If, within this thirty-day period, the Commission staff makes a written request for additional information or documentary material (within the meaning of 16 CFR 803.20), Phoebe Putney and the Hospital Authority may not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. This provision will prevent smaller, non-reportable transactions from taking place without notice to the Commission, and will provide the Commission with an opportunity to review such acquisitions prior to consummation.

B. CON Opposition Restrictions

Second, Phoebe Putney and the Hospital Authority have agreed to restrictions for a period of five (5) years prohibiting them from raising any objections to or providing negative comments about CON applications for general acute-care hospitals in the six-county area surrounding Albany, Georgia, which spans multiple state health planning areas for CON review purposes. This provision would allow a new entrant to apply for a CON without the potential additional cost and delay associated with opposition from Phoebe Putney or the Hospital Authority. Additionally, the Consent Agreement requires Phoebe Putney and the Hospital Authority to provide copies of any objections they file in connection with a CON application for an inpatient or outpatient clinic providing any of the services provided by Phoebe Putney or the Hospital Authority in the six-county area around Albany, Georgia within five (5) days of its submission to the Georgia DCH. The proposed Consent Agreement would, however, permit Phoebe Putney and the Hospital Authority to respond to questions or information requests received from DCH as part of a CON review process.

C. Dismissal as to HCA and Palmyra

Having accepted a settlement that imposes no further relief upon HCA or Palmyra, the Commission has determined to dismiss the Complaint as to them.

VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement, as well as the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the Decision and Order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement and is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission, Commissioner Wright not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2013–21158 Filed 8–28–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–13JQ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Health Professional Application for Training (HPAT)—New —National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC/NCHHSTP is requesting OMB approval to collect data that will be used to monitor and evaluate performance of CDC funded grantees that offer Sexually Transmitted Disease (STD) and Human immunodeficiency virus (HIV) prevention training, training assistance, and capacity building assistance to physicians, nurses, disease intervention specialists, health educators and other public health professionals. Information collection approval is sought for three years.

CDC/NCHHSTP will use the Health Professional Application for Training (HPAT) for this data collection. This instrument was previously approved under OMB clearance #0920–0017 as a Participant Information Form, but was removed from that information collection request upon its most recent revision. The HPAT allows CDC grantees to use a single instrument when partnering with other Health and Human Services (HHS) funded training programs and does not duplicate information collection efforts. The HPAT will serve as the official training application form used for training activities conducted by the CDC-funded STD/HIV Prevention Training Centers' (PTCs) and the HIV Capacity Building Assistance (CBAs) grantees who offer classroom and experiential training, web-based training, clinical consultation, and capacity building assistance to maintain and enhance the capacity of health care professionals to control and prevent STDs and HIV.

The HPAT will also be used to collect information from the training participants regarding their: (1) Occupations, professions, and functional roles; (2) principal employment settings; (3) location of their work settings; and (4) programmatic and population foci of their work. This data collection provides CDC with information to determine whether the training grantees are reaching their target audiences in terms of provider type, the types of organizations in which participants work, the focus of their work and the population groups and geographic areas served; the data collection is also used to triage and assign CBA provider requests.

The 7,400 respondents represent an average of the number of health professionals trained by the CBA and PTC grantees during the years 2010 and 2011. There are no costs to respondents other than their time.

It is estimated that this collection will involve a total of 617 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Healthcare Professionals	Health Professional Application for Training (HPAT)	7,400	1	5/60

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–21087 Filed 8–28–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–0910]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Leroy Richardson, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

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 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. Written comments should

be received within 60 days of this notice.

Proposed Project

Message Testing for Tobacco Communication Activities (OMB No. 0920–0910, exp. 1/31/2015)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use remains the leading preventable cause of death in the United States. Recent legislative developments highlight the importance of tobacco control—including the dissemination of appropriate tobacco control messages—in efforts to improve the nation's health. These developments include the Prevention and Public Health Fund, established by the Affordable Care Act (ACA), which supports initiatives designed to reduce the health and financial burden of tobacco use through prevention and cessation approaches. An essential component of this initiative is a national campaign to increase awareness of the health consequences of tobacco use and exposure to secondhand smoke. The campaign is being planned and implemented by the Office on Smoking and Health (OSH) at the Centers for Disease Control and Prevention (CDC). OSH serves as a resource for tobacco and health information for the public, health professionals, various branches of government, and other interested groups.

In 2012, OSH obtained OMB approval of a generic clearance that established a unified information collection framework for the development of tobacco-related health messages, including messages related to the ACA-funded tobacco education campaign (Message Testing for Tobacco Communication Activities (MTTCA), OMB No. 0920–0910, exp. 1/31/2015). Since that time, CDC has employed the MTTCA clearance to collect information about smokers' and non-smokers' attitudes and perceptions, and to pre-test draft messages and materials for clarity, salience, appeal, and persuasiveness. A variety of information collection strategies are supported through this mechanism, including in-depth interviews, in-person focus groups, online focus groups, computer-assisted, in-person, or telephone interviews, and online surveys. CDC requests OMB approval for each data collection by submitting an Information Collection Request that describes project purpose, use, and methodology. CDC's authority to collect information for public health purposes is provided by the Public Health Service Act (41 U.S.C. 241) Section 301.

CDC plans to revise the generic MTTCA clearance, which was initially approved with the following estimates: 5,775 annualized burden hours and 14,974 annualized responses. The initial estimates were based on the number of respondents who were likely to participate in information collection activities such as focus groups, interviews, and surveys. The initial estimates did not account for specific screening activities that are necessary to identify respondents from key target audiences. As a result, the initial MTTCA clearance underestimated the total number of respondents involved in CDC-sponsored information collection. The planned revision will adjust for screening and recruitment by allocating 20,000 additional respondents, and 667 additional burden hours, to the annualized estimates.

The generic MTTCA clearance will continue to support the development and testing of tobacco-related health messages for the general public and subpopulations. For example, screening activities may be conducted to involve individuals who are Lesbian, Gay, Bisexual, and Transgender (LGBT); individuals who are active military or veterans; individuals who suffer from depression and/or anxiety, and individuals who are English-speaking Hispanics. CDC may also request information about smoking status (e.g., current non-smoker, current smoker, ex-smoker). Screening results will be used to segment target audiences, interpret findings, and explore the development of tailored messages for population subgroups. The estimated burden per response for screening is 2–3 minutes.

CDC will continue to use the MTTCA clearance to develop and test messages and materials for current and future phases of the ACA-funded media campaign, OSH's ongoing programmatic initiatives including the Media Campaign Resource Center (MCRC) and reports from the Office of the Surgeon General, and collaborative efforts within CDC. The MTTCA generic clearance may also be used to facilitate the development of tobacco-related health communications of interest to CDC and other federal partners, including the Food and Drug Administration (FDA), the Substance Abuse and Mental Health Services Administration (SAMHSA), the National Institutes of Health (NIH), and the National Cancer Institute (NCI).

The revision request does not affect the current expiration date of January 31, 2015. The estimated annualized number of responses will increase from 14,974 to 34,974 and the estimated annualized burden hours will increase from 5,775 to 6,442. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Data collection method	Number of respondents	Number of responses per respondent	Average burden per response	Total burden (in hours)
General Public and Special Populations.	Screening and Recruitment	20,000	1	2/60	667
	In-depth Interviews (In Person, telephone, etc.).	67	1	1	67
	Focus Groups (In Person)	160	1	1.5	240
	Focus Groups (Online)	120	1	1	120
	Short Surveys (Online, Bulletin Board, etc.).	6,001	1	10/60	1,000
	Medium Surveys (Online)	7,334	1	25/60	3,056
	In-depth Surveys (Online)	1,292	1	1	1,292
Total		34,974			6,442

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associote Director for Science, Office of the Director, Centers for Diseose Control and Prevention (CDC).

[FR Doc. 2013–21048 Filed 8–28–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology.

Date: September 19, 2013.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Nome of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurotransporters, Receptors, and Calcium Signaling Study Section.

Dote: September 26, 2013.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contoct Person: Peter B Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Nome of Committee: Oncology 2—Translational Clinical Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: September 30, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services Organization and Delivery Study Section.

Date: September 30–October 1, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 23, 2013.

Anna Snouffer,

Deputy Director, Office of Federol Advisory Committee Policy.

[FR Doc. 2013–21026 Filed 8–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Nome of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 06, 2013.

Time: 9:00 a.m. to 4:00 p.m.

Agendo: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, 31 Center Drive, Conference Rooms 10, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 23, 2013.

Melanie J. Gray,

Program Anolyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–21027 Filed 8–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0013]

Agency Information Collection Activities: Submission for Review; Information Collection Extension Request for the Department of Homeland Security Science and Technology First Responders Community of Practice Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the data collection form for the DHS Science & Technology (S&T) First Responders Community of Practice (FRCoP): User Registration Page (DHS Form 10059 (9/09)). The FRCoP web based tool collects profile information from first responders and select authorized non-first responder users to facilitate networking and formation of online communities. All users are required to authenticate prior to entering the site. In addition, the tool provides members the capability to create wikis, discussion threads, blogs, documents, etc., allowing them to enter and upload content in accordance with the site's Rules of Behavior. Members are able to participate in threaded discussions and comment on other member's content. The DHS S&T FRCoP program is responsible for providing a collaborative environment for the first responder community to share information, best practices, and lessons learned. Section 313 of the Homeland Security Act of 2002 established this requirement. This notice and request for comments is required by the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until October 28, 2013.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2012–0013, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: Kathy.Higgins@hq.dhs.gov.* Please include docket number DHS–2012–0013 in the subject line of the message.
- *Fax:* (202) 254–6171. (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: Chief Information Officer—Rick Stevens, 1120 Vermont Ave., Mail Stop 0202, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: DHS FRCoP Contact Kathy Higgins (202) 254–2293 (Not a toll free number).

SUPPLEMENTARY INFORMATION: DHS S&T currently has approval to collect information utilizing the User Registration Form until September 30, 2013 with OMB approval number 1640–0016. The User Registration Form will be available on the First Responders Community of Practice Web site found at [*https://communities.firstresponder.gov/*]. The user will complete the form online and submit it through the Web site.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Renewal of Information Collection.

(2) *Title of the Form/Collection:* First Responders Community of Practice: User Registration Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS Science & Technology Directorate, R-Tech (RTD), DHS Form 10059 (09/09).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individual first responders who wish to participate in the First Responders Community of Practice.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 2000.

b. *An estimate of the time for an average respondent to respond:* 0.5 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 1000 burden hours.

Dated: August 1, 2013.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2013–21112 Filed 8–28–13; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0017; OMB No. 1660–0086]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before September 30, 2013.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005,

facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Flood Insurance Program-Mortgage Portfolio Protection Program.

Type of Information Collection: Extension, without change, of a currently approved information collection.

Form Titles and Numbers: None.

Abstract: FEMA needs the information to ensure that insurance companies that join the NFIP's WYO program meet all state and federal requirements for insurance companies; these include a good record and are well rated in their field. There is no other way to obtain this information which is specific to each company that applies to join the NFIP.

Affected Public: Business or other non-profits.

Estimated Number of Respondents: 341.

Estimated Total Annual Burden Hours: 171.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collections.

Dated: August 20, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–21076 Filed 8–28–13; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0032; OMB No. 1660–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of qualitative data regarding preparedness message framing. The goal of this qualitative research is to gain insights on how best to frame preparedness messaging to effectively encourage and motivate the public to prepare themselves and their families for a disaster.

DATES: Comments must be submitted on or before October 28, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0032. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 840, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathryn Pilman, Program Specialist, Individual and Community Preparedness Division, 202–786–0181. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Federal Emergency Management Agency's (FEMA) Citizen Corps program acts under the authority of Executive Order No. 13254, "Establishing the USA Freedom Corps." Citizen Corps' mission is to bring together government and community leaders to involve citizens in all-hazard emergency preparedness and resilience. FEMA's Individual and Community Preparedness Division (ICPD) directs this effort to support the policy to foster a culture of responsibility, service and citizenship. FEMA will use this collection to ensure the effectiveness and value of awareness and education campaigns, disaster messaging and other associated outreach efforts.

Collection of Information

Title: Preparedness Message Framing Research.

Type of Information Collection: New information collection.

FEMA Forms: 008–0–17, Focus Group Moderator's Guide; FEMA Form 008–0–18, Recruit/Screener Phone Script; and FEMA Form 008–0–19, Post Event Participant Survey.

Abstract: FEMA's Individual and Community Preparedness Division will engage in qualitative research involving the review of disaster preparedness message frames for the purpose of determining the most effective means for presenting disaster preparedness messages. Multiple frames will be used to probe: (1) Overall Understanding of the terms used in preparedness messaging (Disaster; Preparedness; Emergency); (2) General concern and attitudes (Area specific hazards and risks; Concern or worry about specific hazards and risks; plans for taking steps); (3) Reactions to hazard specific message concepts; and (4) Effective channels for communication.). This research will provide insights on how to improve existing disaster preparedness messages to encourage the public to engage in preparedness behaviors.

Affected Public: Individuals and households.

Number of Respondents: 3,840.

Number of Responses: 3,840.

Estimated Total Annual Burden Hours: 940 hours.

Estimated Cost: There are no capital or start-up costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: August 20, 2103.

Charlene D. Myrthil

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–21077 Filed 8–28–13; 8:45 am]

BILLING CODE 9111–27–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice; correction.

SUMMARY: On July 23, 2013, U.S. Customs and Border Protection (CBP) published in the **Federal Register** a document announcing modifications to the National Customs Automation Program (NCAP) tests concerning document imaging, known as the Document Image System (DIS) test, and entry capability, known as the Simplified Entry (SE) test. That document contained an error in the "Documents Supported in the Second Phase of the Test" section regarding the description of a form. This document corrects the July 23, 2013 document to reflect the correct description of the form.

DATES: This correction is effective on August 29, 2013.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Monica Crockett at *monica.v.crockett@cbp.dhs.gov*. For technical questions related to ABI transmissions, contact your assigned client representative. Any partner government agency (PGA) interested in participating in DIS should contact Susan Dyszel at *susan.dyszel@cbp.dhs.gov*. Interested parties without an assigned client representative should direct their questions to Susan Maskell at *susan.c.maskell@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 2013, U.S. Customs and Border Protection (CBP) published in the **Federal Register** a document announcing modifications to the National Customs Automation Program (NCAP) tests concerning document imaging, known as the Document Image System (DIS) test, and entry capability, known as the Simplified Entry (SE) test. 78 FR 44142. That document contained an error in Section III. entitled, "Documents Supported in the Second Phase of the Test" regarding the description of the Animal and Plant Health Inspection Service (APHIS) document Plant Protection and Quarantine (PPQ) Form 586. PPQ Form 586 serves as both the application for a permit, and once approved, the permit itself. This correction is being issued to clarify that only the approved permit may be transmitted via the DIS.

Correction

In the **Federal Register** of July 23, 2013, in the document at 78 FR 44142, on page 44144, in the first column, correct the description of PPQ Form 586 to read: PPQ Form 586, *Permit To Transit Plants and/or Plant Products, Plant Pests, and/or Associated Soil through the United States.*

Dated: August 23, 2013.

Joanne R. Stump,

Acting Director, Regulations and Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2013–21102 Filed 8–28–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5700–FA–05]

Announcement of Funding Awards for Transformation Initiative: Sustainable Communities Research Grant (SCRGP) Program for Fiscal Year 2013

AGENCY: Office of the Assistant Secretary of Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding for the Fiscal Year (FY) 2013 Transformative Initiative: Sustainable Communities Research Grant Program (SCRGP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help complete the research projects developed under this program.

FOR FURTHER INFORMATION CONTACT: Regina Gray, Division of Affordable Housing Research and Technology, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Room 8132, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 402–2876. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than "800" TTY numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Office of Policy Development and Research (PD&R), under the Assistant Secretary, administered the FY13 Sustainable Communities Research Grant Program (SCRGP) to invite research proposals that build on existing evidence-based scholarship in the broad area of sustainability. Research proposals were submitted in 3 subject categories: (1) Affordable housing development and preservation, (2) transportation and infrastructure planning, and (3) "green" and energy-efficient practices. The Catalog of Federal Domestic Assistance number for this program is 14.523.

On April 16, 2013, HUD posted a Notice of Funding Availability (NOFA) for Fiscal Year 2013 Transformation Initiative: Sustainable Communities Research Grant Program on *Grants.gov*. The Office of Policy Development and Research reserved $500,000 to fund up to five research grants made available under the Furthering Continuing Resolution Act, 2013 (Pub. L. 113–6 approved March 26, 2013). Applicants could request a minimum amount of $75,000 or a maximum of $125,000. The grant performance period is for 24 months (2 years). Awards under this NOFA will be administered in the form of a Cooperative Agreements.

The Department reviewed, evaluated and scored the applications received based on the rating criteria described in the FY13 NOFA. As a result, HUD has accepted the applications announced below, and in accordance with Section 102(a)(4)(C) of the U.S. Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545). More information about the awardees may be found at *www.huduser.org*.

Dated: August 20, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

Attachment

List of Awardees for Grant Assistance Under the Fiscal Year (FY) 2013 Sustainable Communities Research Grant Program Funding Competition, By Institution, Address, Grant Amount and Point of Contact

1. Bright Power, Inc., Mr. Jonathan Braman, 11 Hanover Square, New York, NY.

Grant: $125,000. (Principal Investigator: Mr. Jonathan Braman)
2. The State University of New York at Buffalo, Ms. Mary Kraft, 402 Crofts Hall, Buffalo, NY. Grant: $124,897. (Principal Investigators: Dr. Robert M. Silverman, Dr. Kelly L. Patterson, Dr. Li Yin)
3. The University of Texas at Austin, Ms. Shannon McCain, 101 East 27th Street, Stop A9000, Suite 5.300, Austin. Grant: $124,990. (Principal Investigator: Dr. Elizabeth J. Mueller)
4. The University of Utah at Salt Lake City, Ms. Shauna Peterson, 1471 East Federal Way, Salt Lake City, UT. Grant: $124,807. (Principal Investigators: Dr. Sarah J. Hinners, Dr. Michael A. Larice, Dr. Arthur C. Nelson)

[FR Doc. 2013–21124 Filed 8–28–13; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FHC–2013–N012; FF09F21000–FXHC112509CBRA–134]

John H. Chafee Coastal Barrier Resources System; Delaware, North Carolina, South Carolina, Florida, and Texas; Availability of Draft Maps and Request for Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coastal Barrier Resources Act (CBRA) requires the Secretary of the Interior (Secretary) to review the maps of the John H. Chafee Coastal Barrier Resources System (CBRS) at least once every 5 years and make any minor and technical modifications to the boundaries of the CBRS as are necessary to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces. We, the U.S. Fish and Wildlife Service (Service), have conducted this review for all of the CBRS units in Delaware, South Carolina (including one unit that crosses the State boundary into North Carolina), Texas, and one CBRS unit in Florida. The draft maps were produced by the Service in partnership with the Federal Emergency Management Agency (FEMA). This notice announces the findings of our review and request for comments on the draft revised maps from Federal, State, and local officials.

DATES: To ensure consideration, we must receive your written comments by September 30, 2013.

ADDRESSES: Mail or hand-deliver (during normal business hours) comments to Katie Niemi, Coastal Barriers Coordinator, Division of Budget and Technical Support, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 840, Arlington, VA 22203, or send comments by electronic mail (email) to *CBRAcomments@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Katie Niemi, Coastal Barriers Coordinator, (703) 358–2071.

SUPPLEMENTARY INFORMATION: This notice fulfills a requirement under the CBRA (16 U.S.C. 3503(f)(3)) that requires the Secretary to publish a notice in the **Federal Register** of any proposed revisions to the CBRS authorized under 16 U.S.C. 3503(c)–(e). The CBRA requires the Secretary to review the maps of the CBRS at least once every 5 years and make any minor and technical modifications to the boundaries of the CBRS as are necessary to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces (16 U.S.C. 3503(c)). Most of the modifications to the draft maps announced via this particular notice for Delaware, South Carolina (including one unit that crosses that State boundary into North Carolina), Texas, and one unit in Florida, were made to reflect changes to the CBRS units that occurred as a result of natural forces (e.g., erosion and accretion). However, one of the draft maps also includes a voluntary addition to the CBRS that was requested by the owners of the property. The CBRA authorizes the Secretary to add a parcel of real property to the CBRS if: (1) The owner of the parcel requests, in writing, that the Secretary add the parcel to the CBRS; and (2) the parcel is an undeveloped coastal barrier (16 U.S.C. 3503(d)). The CBRA also authorizes the Secretary to add excess Federal property to the CBRS following consultation with the Administrator of the U.S. General Services Administration and a determination that the property constitutes an undeveloped coastal barrier (16 U.S.C. 3503(e)). None of the draft maps announced via this particular notice for Delaware, South Carolina (including one unit that crosses that State boundary into North Carolina), Texas, and one unit in Florida, include additions of excess Federal property to the CBRS.

The Service's review resulted in a set of 87 draft revised maps dated November 30, 2012, depicting a total of 69 CBRS units. The set of maps includes: 7 Maps for 10 CBRS units located in Delaware; 24 maps for 23 CBRS units located in South Carolina (including 1 unit that crosses the State boundary into North Carolina); 55 maps for 35 CBRS units located in Texas; and 1 map for 1 CBRS unit located in both Pasco and Pinellas Counties, Florida. The Service found that 62 of the 69 units reviewed had experienced changes in their size or location as a result of natural forces since they were last mapped.

Background

Coastal barriers are typically narrow, elongated landforms located at the interface of land and sea and are inherently dynamic ecosystems. Coastal barriers provide important habitat for fish and wildlife, and serve as the mainland's first line of defense against the impacts of severe storms. With the passage of the CBRA in 1982 (Pub. L. 97–348), Congress recognized that certain actions and programs of the Federal Government have historically subsidized and encouraged development on coastal barriers, where severe storms are much more likely to occur, and the result has been the loss of natural resources; threats to human life, health, and property; and the expenditure of millions of tax dollars each year (16 U.S.C. 3501(a)).

The CBRA established the CBRS, which comprised 186 geographic units encompassing approximately 453,000 acres of undeveloped lands and associated aquatic habitat along the Atlantic and Gulf of Mexico coasts. The CBRS was expanded by the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591) to include additional areas along the Atlantic and Gulf of Mexico coasts, as well as areas along the coasts of the Great Lakes, the U.S. Virgin Islands, and Puerto Rico. The CBRS now comprises a total of 857 geographic units encompassing approximately 3.1 million acres of relatively undeveloped coastal barrier lands and associated aquatic habitat. These areas are depicted on a series of maps entitled "John H. Chafee Coastal Barrier Resources System."

Most new Federal expenditures and financial assistance that have the effect of encouraging development are prohibited within the CBRS. However, development can still occur within the CBRS, provided that private developers or other non-Federal parties bear the full cost, rather than the American taxpayers.

The CBRS includes two types of units, System Units and Otherwise Protected Areas (OPAs). System Units generally comprise private lands that were relatively undeveloped at the time of their designation within the CBRS. Most new Federal expenditures and financial assistance, including Federal flood insurance, are prohibited within System Units. OPAs generally comprise lands established under Federal, State, or

local law, or are held by a qualified organization primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. OPAs are denoted with a "P" at the end of the unit number (e.g., DE–01P). The only Federal spending prohibition within OPAs is the prohibition on Federal flood insurance.

The Secretary, through the Service, is responsible for administering the CBRA, which includes maintaining the official maps of the CBRS, consulting with Federal agencies that propose to spend funds within the CBRS, preparing updated maps of the CBRS, and making recommendations to Congress regarding proposed changes to the CBRS. Aside from three minor exceptions, only Congress—through new legislation—can modify the maps of the CBRS to add or remove land. These exceptions, which allow the Secretary to make limited modifications to the CBRS (16 U.S.C. 3503(c)–(e)), are for: (1) Changes that have occurred to the CBRS as a result of natural forces; (2) voluntary additions to the CBRS requested by property owners; and (3) additions of excess Federal property to the CBRS.

Digital Conversion of the CBRS Maps

Official CBRS boundaries are depicted on maps adopted by Congress. The boundaries have also been identified on the Flood Insurance Rate Maps (FIRMs) produced by FEMA with varying degrees of accuracy. The FIRMs are used to determine flood insurance eligibility and rates through the National Flood Insurance Program. The CBRS boundaries are shown on the FIRMs because of the CBRA's restriction on Federal flood insurance within the CBRS.

Since 2006, the Service and FEMA have collaborated to improve the accuracy of the CBRS boundaries depicted on the FIRMs. In 2011, this interagency partnership was expanded to help facilitate a "digital conversion" of the official CBRS maps. The purpose of the digital conversion effort is to:

(1) Ensure that the CBRS boundaries depicted on the FIRMs are consistent with the CBRS boundaries depicted on the official CBRS maps;

(2) Update the CBRS maps to account for natural changes and to incorporate any voluntary additions and excess Federal property within the CBRS; and

(3) Replace the entire set of CBRS maps at a lower cost and in a timelier manner than would be possible via comprehensive map modernization ("comprehensive map modernization" is the type of mapping mandated by section 4 of Public Law 109–226 and described in the Service's 2008 *Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project*). See additional information concerning comprehensive map modernization at the end of this section.

The timeframe for updating the CBRS maps for particular areas through the digital conversion effort is determined by the Service and FEMA, taking into consideration other ongoing mapping efforts in order to maximize efficiencies and minimize costs. The digital conversion effort improves the accuracy, integrity, and usability of the CBRS data and maps, which increases compliance with the CBRA by reducing erroneous Federal expenditures (including invalid flood insurance policies) within the CBRS, and improves government efficiency and customer service by providing more reliable and user-friendly CBRS maps and digital data.

Through the digital conversion effort, the existing CBRS boundaries will be:

(1) Transferred and fitted to updated base maps (i.e., a recent aerial image) to ensure that the boundaries correspond with the natural or development features they are clearly intended to follow on the official maps (such adjustments will generally be within the width of the existing CBRS boundary, which is about 100 feet on the Earth's surface);

(2) Modified to reflect any natural changes that have occurred since the maps were last updated and to incorporate any voluntary additions and excess Federal property within the CBRS; and

(3) In limited circumstances, modified to correct administrative errors made in the past either in (a) the transcription of the boundaries from maps that were reviewed and approved by Congress to the official CBRS maps on file with the Service or (b) the inclusion of unqualifying areas to the CBRS through a map modification to account for natural changes under 16 U.S.C. 3503(c).

In reviewing the CBRS maps for Delaware, South Carolina (including the unit that crosses into North Carolina), Texas, and one unit in Florida, the Service found that most of these areas (62 of the 69 CBRS units reviewed) had experienced some level of natural change since they were last remapped.

Changes to the CBRS boundaries through digital conversion are limited to the administrative modifications the Secretary is authorized to make under the CBRA (16 U.S.G. 3503(c)–(e)) and limited modifications needed to correct transcription errors between the boundaries approved by Congress in the past and those depicted on the official CBRS maps on file with the Service. Changes that are outside the scope of this authority cannot be made through the digital conversion process; such changes must be made through the comprehensive map modernization process, which is more time and resource intensive because it entails significant research, public review, and Congressional enactment of the revised maps. Comprehensive map modernization not only transfers the CBRS boundaries to a new base map and makes any modifications necessary to account for natural changes, but also corrects errors that affect property owners and adds areas appropriate for inclusion to the CBRS (beyond those additions authorized under 16 U.S.C. 3503(c)–(e)). The Coastal Barrier Resources Reauthorization Act of 2006 (Section 4 of Pub. L. 109–226) directs the Secretary to produce comprehensively revised maps for the entire CBRS. The Service has produced a limited number of comprehensively revised maps for Congressional consideration in the past and will continue to produce comprehensively revised maps as resources are made available for that effort.

CBRS Digital Conversion Methodology

Below is a summary of the methodology the Service used to conduct a review of the CBRS units to identify areas where natural change has occurred and to produce draft revised maps through the digital conversion process.

Base Map Selection

A base map is a map depicting background reference information such as landforms, roads, landmarks, and political boundaries, onto which other thematic information is placed. In an effort to ensure consistency between the CBRS boundaries depicted on the official CBRS maps and the FEMA FIRMs, the Service generally selected the same underlying base map as the base map used by FEMA for the FIRM. In some cases, the FIRM base map was not suitable for CBRS mapping (e.g., when the FIRM base map was vector based instead of an aerial image or did not provide complete coverage over remote coastal barrier features). In such cases, the Service selected aerial imagery to serve as the CBRS base map that was recent (generally less than 5 years old), high resolution (1 meter per pixel resolution or better), orthorectified (i.e., adjusted to ensure the proper perspective of features relative to their true position on the Earth's surface), and available free of charge.

Georeferencing and Boundary Interpretation

CBRS boundaries are generally intended to follow natural and development features on the ground, such as shorelines, stream channels, edges of marshes or wetlands, roads, and jetties. The CBRS boundaries must be fit to these same features on the new base map through a process of boundary interpretation and transcription. Prior to transcribing the CBRS boundaries to the new base map, scanned versions of all currently controlling and superseded CBRS maps for the affected areas were georeferenced (i.e., aligned to a known geographic coordinate system) to the new base map and analyzed to determine the original intent of the CBRS boundaries. The Service also consulted the 1982 and 1994 CBRS Photographic Atlases (a set of aerial photographs maintained by the Service with the CBRS unit boundaries overlaid) and other sources to aid in boundary interpretation.

Boundary Transcription

The original base maps used for the official CBRS maps are, in most cases, U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle maps (i.e. maps from a commonly used series published by USGS, generally at a scale of 1:24,000) dated 1990 or earlier. The USGS maps were designed to meet the United States National Map Accuracy Standards which define accuracy standards for published maps, including horizontal and vertical accuracy (National Map Accuracy Standards are available for download at *http://nationalmap.gov/standards/nmas.html*). The horizontal accuracy standard requires at least 90 percent of the "well-defined points" (e.g., property boundary monuments, intersections of roads, corners of large buildings, etc.) tested to be accurate to 1/50 of an inch on the map, which translates to 40 feet on the ground (using a 1:24,000 scale map). However, most CBRS boundaries follow features (e.g., shorelines, vegetative breaks, and mangrove stands) that are dynamic and/or do not meet the definition of "well-defined points" and, therefore, may have a degree of horizontal error greater than 40 feet. As such, the CBRS boundaries have inherited the underlying base map's level of error in horizontal accuracy.

Compounding the problems associated with the outdated base maps is the fact that the CBRS boundaries were hand drawn on the base maps using now antiquated cartographic techniques. System unit boundaries were manually drawn on the maps with a thick pen, and the OPA boundaries were delineated using strips of cartographic drafting tape affixed directly onto the base maps. The use of strips of tape to represent curving features such as shorelines on large scale maps contributed to the inaccuracy of the OPA boundaries. These now outdated manual techniques for delineating the CBRS boundary lines resulted in a boundary thickness that translates to about 100 feet on the Earth's surface. Additionally, in some cases, the boundary lines contain gaps that were left intentionally so that annotation on the base maps would not be obscured.

Due to the dynamic nature of coastal areas, the age and relative inaccuracy of the original base maps, and the manual cartographic techniques used to create the current set of official CBRS maps, the Service has found that digitizing the center of the boundary from the georeferenced CBRS map and placing it on the new base map often yields discrepancies between the CBRS boundaries and the features they are clearly intended to follow on the ground. Therefore, the Service evaluated the intent of each segment of CBRS boundary and fit the boundary to the new base map according to the following general guidelines:

- If the intent of a particular boundary segment was clearly to follow an identifiable natural or development feature, the digital boundary was adjusted to the appropriate feature on the new base map. The extent of such adjustments was generally limited to the width of the existing boundary line depicted on the official map (which translates to about 100 feet on the Earth's surface).
- If the intent of a particular boundary segment could not be determined; if the underlying feature had clearly undergone human-generated change; or if the boundary line on the official map is generally more than 100 feet from the actual feature it was intended to follow on the ground, no adjustments were made and the center of the georeferenced boundary was used. These types of changes are beyond the scope of the digital conversion effort and require further review through the comprehensive map modernization effort that is described earlier in this notice.
- If clear and compelling evidence was found (through the course of the normal boundary review and interpretation process) that the boundary on the official CBRS map reflected a minor transcription error that was made after the original draft maps were reviewed and approved by Congress in past years, that error was corrected.

Additional information concerning the horizontal accuracy and other challenges associated with the existing CBRS maps and boundaries is available in the CBRS boundary metadata posted on the Service's Internet site at *http://www.fws.gov/cbra/Maps/CBRS-Metadata.xml* and in the Service's 2008 *Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project.*

Boundary Modifications To Account for Natural Changes, Voluntary Additions, and Additions of Excess Federal Property

The Service assessed the official CBRS maps, as well as historical and current aerial imagery, to determine where natural changes (e.g., eroded shorelines, accreted sand spits, changes in the configuration of the wetlands, etc.) have occurred since the maps were last updated. Where the intent of a boundary segment was clearly to follow a geomorphic feature on the ground, and that feature had undergone natural change, the boundary on the map was modified to follow the present location of the geomorphic feature and/or the aquatic habitat associated with the feature. Associated aquatic habitat may include the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters associated with the fastland component of the coastal barrier. The term "fastland" refers to the portion of a coastal barrier between the mean high tide line on the ocean side, and the upper limit of tidal vegetation (or, if such vegetation is not present, the mean high tide line) on the landward side of the coastal barrier. In many cases, portions of the landward boundary were modified to reflect natural changes to the wetland/fastland interface. The "wetland/fastland interface" is a transitional area between wetlands and fastlands, or land that is predominately wet and land that is predominately dry. This interface was identified for CBRS mapping purposes through aerial photo interpretation, supported in some cases by National Wetlands Inventory data (*http://www.fws.gov/wetlands*).

The CBRS boundaries were also modified to account for any other administrative changes that are authorized by the CBRA (i.e., inclusion of voluntary additions and excess Federal property).

Map Paneling

Each official CBRS map covers a spatial extent roughly equivalent to one USGS 7.5-minute topographic quadrangle; this spatial extent is

referred to as a "map panel." There are many places where the existing CBRS map panels overlap each other, yet provide no indication that there is another CBRS unit in the same area that is shown on a different map panel. This omission is a source of confusion for users who assume that if no CBRS unit is depicted on a specific CBRS map, then there is no CBRS unit in that area. The Service addressed this issue by repaneling the affected areas using one of the following two options.

Option 1: The existing map panels were shifted and/or combined to eliminate overlaps, and all CBRS units on a given map panel were depicted. For example, Harbor Island Unit M11 and Hunting Island Unit SC–09P in South Carolina are adjacent to one another and share a coincident boundary, but are currently shown on two separate official maps. As a result of this review, these two maps were combined into a single map depicting both units. Also, Waites Island Complex Unit M01 is currently considered to be two distinct units with the same name, one in North Carolina and one in South Carolina, and these units are depicted individually on two separate maps. As a result of this review, the two units were combined, counted as one unit, and depicted on a single map.

Option 2: Due to time constraints, many maps included in this review were not repaneled. In these cases, the adjacent unit(s) that are not the subject of the map are shown for informational purposes with a note indicating that there is a separate map for the adjacent unit(s).

In future projects, the Service will generally follow the first option above to eliminate as many map panel overlaps as possible. Changes to the configuration of the CBRS map panels do not affect the placement of the CBRS boundaries, but will help reduce confusion and improve the usability of the CBRS maps.

Proposed Modifications to the CBRS Boundaries

In accordance with the CBRA's requirement to update the CBRS maps at least once every 5 years to account for natural changes, the Service has prepared draft revised maps for all CBRS units in Delaware, South Carolina (including a unit that crosses into North Carolina), Texas, and one unit in Florida. These draft maps are dated November 30, 2012. The Service's review of these areas found a total of 62 CBRS units that require modifications due to natural changes in the size or location of the units. Below is a summary of those changes depicted on the draft maps. The summary also identifies one voluntary addition to the CBRS requested by the owners of a property in Horry County, South Carolina (in accordance with 16 U.S.C. 3503(d)) and the correction of a transcription error that was made in 1990 on one map in Galveston County, Texas.

Following the close of the comment period on the date listed in the **DATES** section of this document, the Service will review all comments received from Federal, State, and local officials on the draft maps; make adjustments to the draft maps, as appropriate; and publish a notice in the **Federal Register** to announce the availability of the final revised maps.

Delaware

The Service's review found all 10 of the CBRS units in Delaware to have changed due to natural forces.

DE–01: LITTLE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has also been modified to reflect channel migration along Lewis Ditch. The seaward boundary of the excluded area was modified to account for shoreline erosion along the Delaware Bay.

DE–01P: LITTLE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has been modified to reflect channel migration and erosion along Kellys Ditch, Lewis Ditch, and several small unnamed creeks. The boundary has also been modified to account for erosion at the mouth of the St. Jones River.

DE–02P: BEACH PLUM ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has also been modified to account for channel migration and erosion along Broadkill River, Doty Glade, Old Mill Creek, and Canary Creek. The name of this unit has been changed from "Plum Beach Island" to "Beach Plum Island" to correctly identify the underlying barrier feature.

DE–03P: CAPE HENLOPEN UNIT. The boundary of the unit has been modified to account for erosion along the Lewes and Rehoboth Canal, as well as erosion and channel migration of an unnamed stream.

DE–06: SILVER LAKE UNIT. The landward boundary of the unit has been modified to account for erosion and accretion along the shoreline of Silver Lake.

DE–07P: DELAWARE SEASHORE UNIT. The boundary of the unit has been modified to account for shoreline erosion at the tip of Cedar Neck.

DE–08P: FENWICK ISLAND UNIT. The landward boundary of the unit has been modified to account for erosion and channel migration along Miller Creek and an unnamed stream. The landward boundary has also been modified to account for marsh erosion along the western shoreline of Little Assawoman Bay.

H00: BROADKILL BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has also been modified to account for channel migration and erosion along the Murderkill River, Brockonbridge Gut, Mispillion River, Cedar Creek, Primehook Creek and several small unnamed streams. The seaward boundary of the excluded area has been modified to account for shoreline erosion along Delaware Bay.

H00P: BROADKILL BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has also been modified to account for channel migration and erosion along Brockonbridge Gut, Mispillion River, Broadkill River, and several small unnamed streams.

H01: NORTH BETHANY BEACH UNIT. The landward boundary of the unit has been modified to account for erosion and channel migration of an unnamed stream.

South Carolina

The Service's review found all 23 of the CBRS units in South Carolina (including one unit, M01, that crosses the State boundary into North Carolina) to have changed due to natural forces.

M01: WAITES ISLAND COMPLEX. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh, wetland/fastland interface, and the location of House Creek, Little River, the Intracoastal Waterway, a small unnamed creek, and Hog Inlet. Due to the dynamic nature of the adjacent barrier to the south of the unit, the southern lateral boundary has been generalized and placed generally at the southern side of Hog Inlet. The South Carolina and North Carolina segments of this unit have been combined into a simple map for simplicity and clarity.

M02: LITCHFIELD BEACH UNIT. The landward boundary of the unit has been modified to account for channel migration along Clubhouse Creek, wetlands loss, and the accretion of the Litchfield Beach sand spit and associated shoals.

M03: PAWLEYS INLET UNIT. The boundary of the unit has been modified to include emergent marsh, account for channel migration at the north end of the unit, and reflect natural changes to the wetland/fastland interface on the landward side of the unit.

M04: DEBIDUE BEACH UNIT. The boundary of the unit has been modified to account for channel migration along Debidue and Jones Creeks. The boundary has been modified to reflect natural changes to the wetland/fastland interface on the landward side of the unit, and to keep all of North Island in the adjacent unit to the south (Unit SC–04).

M05: DEWEES ISLAND COMPLEX. The boundary of the unit has been modified to account for natural changes in the wetlands and channel migration along Whiteside Creek, Dewees Creek, and Capers Inlet. The boundary has been modified to reflect natural changes to the wetland/fastland interface on the mainland as well as along the northern side of Dewees Island.

M06: MORRIS ISLAND COMPLEX. Portions of the unit's landward boundary have been modified to account for natural changes to the wetlands/fastland interface. The boundary has been modified to address channel migration and wetlands loss along Folly Creek, Rat Island Creek, and several other minor channels. The boundary has been modified to account for erosion at the tip of the sand spit on the northern end of Folly Island. Several portions of the boundary have been generalized where the underlying features that the boundary originally followed (e.g., wetlands and minor channels) no longer exist and suitable substitutes were not identified.

M07: BIRD KEY COMPLEX. Portions of the unit's boundary have been modified to account for channel migration along Folly River, Stono River, and Bass Creek. Portions of the landward boundary have been modified to reflect natural changes to the wetland/fastland interface. Several portions of the boundary have been generalized where the underlying features that the boundary originally followed (e.g., wetlands and minor channels) no longer exist and suitable substitutes were not identified.

M07P: BIRD KEY COMPLEX. Portions of the unit's boundary have been modified slightly to account for channel migration along Folly River.

M08: CAPTAIN SAMS INLET UNIT. The eastern boundary of the unit has been modified to account for channel migration along Kiawah River and Captain Sams Creek. The landward boundary has been modified to address natural changes to the wetland/fastland interface.

M09: EDISTO COMPLEX. The boundary of the unit has been modified to account for channel migration along North Edisto River, Ocella Creek, and Jeremy Inlet. The landward boundary has been modified to reflect natural changes to the wetland/fastland interface. The offshore boundary has been extended to clarify the inclusion of Deveaux Bank within the unit.

M09P: EDISTO COMPLEX. The boundary of the unit has been modified to account for channel migration along Jeremy Inlet and Scott Creek.

M10: OTTER ISLAND UNIT. The boundary of the unit has been modified to account for channel migration along South Edisto River and Two Sisters Creek. The boundary has been modified to reflect natural changes in the wetland/fastland interface.

M11: HARBOR ISLAND UNIT. The boundary of the unit has been modified to account for erosion and wetlands loss along Harbor River and Ward Creek and to remove a portion of Harbor Island, which has accreted into the unit but was intended to be excluded. The boundary has been modified to reflect natural changes in the wetland/fastland interface.

M12: ST. PHILLIPS ISLAND UNIT. The boundary of the unit has been modified to account for channel migration, wetlands loss, and spit accretion along Skull Creek and Skull Inlet. The boundary has been modified to account for channel migration along Story River and an unnamed tributary. The landward boundary has been modified to reflect natural changes to the wetland/fastland interface.

M13: DAUFUSKIE ISLAND UNIT. The northern lateral boundary of the unit has been moved northward to account for an accreting sand spit and associated shoals. The boundary has been modified to address channel migration along Mungen Creek, New River, and an unnamed stream.

SC–01: LONG POND UNIT. A segment of the boundary in the northern portion of the unit has been modified to account for channel migration and erosion. The portions of the Meher Spiritual Center that were not already within the unit have been added based on a voluntary addition request made by the owners of the property to the Secretary of the Interior.

SC–03: HUNTINGTON BEACH UNIT. The northern boundary of the unit along Main Creek has been modified to account for natural changes at the southern tip of Garden City Beach north of Murrells Inlet. Portions of the boundary have been modified to account for channel migration along Oaks Creek and natural changes that have occurred in the configuration of the wetland/fastland interface.

SC–04: NORTH/SOUTH ISLANDS UNIT. The boundary of the unit has been modified to account for natural changes in the wetland/fastland interface and channel migration in North Santee Bay. The boundary has been modified to keep all of North Island and South Island, which had both been accreting into adjacent units, in Unit SC–04.

SC–05P: SANTEE UNIT. The boundary of the unit has been modified to account for channel migration along North Santee Bay and the South Santee River. The landward boundary has been modified to reflect natural changes to the wetland/fastland interface. A portion of Cape Island has accreted out of adjacent Unit SC–06P and into Unit SC–05P, but because it is unclear whether this portion of the coincident boundary between the two units is based on an established property boundary, the boundary has not been modified.

SC–06P: CAPE ROMAIN UNIT. The boundary of the unit has been modified to reflect natural changes to the wetland/fastland interface. It has been modified to address channel migration and wetlands loss along Bull Narrows, Price Creek, and several other minor channels. A portion of Cape Island has accreted out of Unit SC–06P and into adjacent Unit SC–05P, but because it is unclear whether this portion of the coincident boundary between the two units is based on an established property boundary, the boundary has not been modified.

SC–07P: CAPERS ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes to the wetland/fastland interface. The boundary has been modified to account for channel migration and wetlands loss along Bull Narrows, Price Creek, Whiteside Creek, Capers Inlet, and several other minor channels.

SC–09P: HUNTING ISLAND UNIT. The boundary of the unit has been modified to account for erosion and wetlands loss along Harbor River, and channel migration in the unnamed channel upstream of Fripps Inlet.

SC–10P: TURTLE ISLAND UNIT. The boundary has been modified to account for channel migration along New River, Wright River, and Walls Cut.

Texas

The Service's review found 28 of the 35 CBRS units in Texas to have changed due to natural forces.

T02A: HIGH ISLAND UNIT. The boundary of the unit has been modified to reflect natural changes to the southern edge of the Intracoastal Waterway.

T03A: BOLIVAR PENINSULA UNIT. The boundary of the unit has been modified to reflect natural changes in the configuration of the wetlands on and around the Bolivar Peninsula and along the Intracoastal Waterway. A small overwash fan has been added to the southern segment of the unit. Additionally, the excluded area of the southern segment of the unit and a portion of the southwestern boundary of the southern segment of the unit were modified (by approximately 80 feet and 230 feet respectively) to correct an error in transcription of the boundary from the draft map that was reviewed and approved by Congress to the official map dated October 24, 1990, for this unit. This area was correctly depicted on the original 1982 official map for Unit T03A as well as the draft map for Unit T03A contained the Service's *1988 Report to Congress: Volume 19, Texas (North Coast)*. This correction is supported by an assessment of the historical maps for this area as well as the legislative history of the Coastal Barrier Improvement Act of 1990 (Pub. L 101–591).

T03AP: BOLIVAR PENINSULA UNIT. A portion of the boundary at the southwestern end of the unit has been modified to reflect natural changes along the Gulf-fronting shoreline near Port Bolivar.

T04: FOLLETS ISLAND UNIT. The boundary of the unit has been modified to account for natural changes to the landward side of Follets Island, the southern side of the Intracoastal Waterway, and the configuration of the wetlands along Mud Island. The seaward boundaries of the excluded areas have been modified to account for erosion along the Gulf-fronting shoreline of Follets Island.

T04P: FOLLETS ISLAND UNIT. The boundary of the unit has been modified to account for natural changes to the landward side of Follets Island, the southern side of the Intracoastal Waterway, and the configuration of the wetlands along Mud Island.

T05: BRAZOS RIVER COMPLEX. The boundary of the unit has been modified to account for natural changes along the southern edge of the Intracoastal Waterway. The boundary of the southern segment of the unit located landward of the Intracoastal

Waterway has been modified in some places to reflect natural changes to the wetlands and the eastern edge of the San Bernard River.

T05P: BRAZOS RIVER COMPLEX. Portions of the landward boundary at the northern end of the unit have been modified to account for natural changes to the southern edge of the Intracoastal Waterway.

T06: SARGENT BEACH UNIT. Portions of the unit's boundary have been modified to account for wetlands loss and to follow the northern edge of the barrier located to the south of the Cedar Lakes. The coincident boundary between Units T06 and T06P has been generalized in places where the configuration of the barrier feature has changed. The lateral portion of the coincident boundary between the two units has not been modified, because it is unclear whether that portion of the boundary is based on an established property boundary.

T06P: SARGENT BEACH UNIT. Portions of the landward boundary at the northern end of the unit have been modified to account for natural changes to the southern edge of the Intracoastal Waterway. Portions of the boundary have been modified to account for wetlands loss and to follow the northern edge of the barrier located to the south of the Cedar Lakes. The coincident boundary between Units T06 and T06P has been generalized in places where the configuration of the barrier feature has changed. The lateral portion of the coincident boundary between the two units has not been modified, because it is unclear whether that portion of the boundary is based on an established property boundary.

T07: MATAGORDA PENINSULA UNIT. The coincident boundary between Units T07 and T07P has been generalized, in order to account for natural changes to the edge of the wetlands and the shoreline on the landward side of the Matagorda Peninsula and a strip of spoil islands behind the peninsula along the Intracoastal Waterway. These boundaries have been generalized because of the highly dynamic nature of the barrier. Wetlands located to the west of the Colorado River on the landward side of the unit were added to the unit. An historic inlet towards the southern end of the Matagorda Peninsula that has closed since the map was last updated has been reclassified from T07P (an otherwise protected area) to T07 (a System unit).

T07P: MATAGORDA PENINSULA UNIT. The coincident boundary between Units T07 and T07P has been generalized, in order to account for natural changes to the edge of the wetlands and the shoreline on the landward side of the Matagorda Peninsula and strip of spoil islands behind the peninsula along the Intracoastal Waterway. These boundaries have been generalized because of the highly dynamic nature of the barrier. Wetlands around the mouth of a channel that empties into Matagorda Bay (located just west of the Colorado River) have been added to the unit. An historic inlet towards the southern end of the Matagorda Peninsula that has closed since the map was last updated has been reclassified from T07P (an otherwise protected area) to T07 (a System unit).

T08: SAN JOSE ISLAND COMPLEX. The coincident boundaries between Units T08 and TX–06P and between Units T08 and T08P have been modified to account for natural changes along certain channels within the wetlands on the landward side of Matagorda Island, along the edge of the wetlands behind Matagorda Island and San Jose Island, and along the shoreline of the barrier. An historic inlet at Cedar Bayou between San Jose Island and Matagorda Island that has closed since the map was last updated has been reclassified from T08P (an otherwise protected area) to T08 (a System unit).

T08P: SAN JOSE ISLAND COMPLEX. The landward boundary of most of the unit has been modified to account for natural changes along the southern edge of the Intracoastal Waterway. The coincident boundaries between Units T08P and TX–06P and between Units T08P and T08 have been modified to account for natural changes along certain channels within the wetlands on the landward side of Matagorda Island, along the edge of the wetlands behind Matagorda Island and San Jose Island, and along the shoreline of the barrier. An historic inlet at Cedar Bayou between San Jose Island and Matagorda Island that has closed since the map was last updated has been reclassified from T08P (an otherwise protected area) to T08 (a System unit).

T11, T11P: SOUTH PADRE ISLAND UNIT. The coincident boundary between Units T11 and T11P has been modified in some places to better follow a break between the Laguna Madre and South Padre Island that is visible on the base imagery.

T12: BOCA CHICA UNIT. Portions of the boundary of the unit have been modified to account for natural changes to the wetland/fastland interface as visible on the base imagery. The northern boundary of the unit has been modified to account for natural changes to the shoreline. Two narrow strips that were not included in the original unit were added to the southwestern portion of the unit. These strips include both wetlands and fastlands that are not connected to the mainland and are part of the barrier system. The boundary along the mouth of the Rio Grande has been moved northward to account for erosion of the barrier on the U.S. side of the river and accretion of the barrier on the Mexico side.

T12P: BOCA CHICA UNIT. Portions of the western boundary of the southern segment of the unit have been modified to reflect natural changes to the wetland/fastland interface as visible on the base imagery.

TX–02P: MCFADDIN UNIT. The boundary of the unit has been modified to reflect natural changes to the southern edge of the Intracoastal Waterway and to the northern shoreline of Star Lake.

TX–04, TX–04P: SWAN LAKE UNIT. The coincident boundary between the units has been generalized due to the erosion of the underlying barrier feature in Swan Lake that it was originally following. The landward boundary of both units has been modified to reflect natural changes in the wetland/fastland interface and the shoreline.

TX–06P: MATAGORDA ISLAND UNIT. The landward boundary of most of the unit has been modified to account for natural changes along the southern edge of the Intracoastal Waterway. The coincident boundaries between Units TX–06P and T08P and between Units TX–06P and T08 at the southern end of the unit have also been modified due to natural changes along certain channels within the wetlands on the landward side of Matagorda Island.

TX–09: COON ISLAND BAY UNIT. Portions of the landward boundary of the unit have been modified to account for natural changes to the wetland/fastland interface and the shoreline.

TX–10: SHELL BEACH UNIT. Portions of the landward boundary of the unit have been modified to account for natural changes to the wetland/fastland interface. An area of wetlands along the northern lateral boundary was added to the unit.

TX–15P: MUSTANG ISLAND UNIT. Portions of the southern boundary of the unit located to the northwest of Packery Channel Park have been modified to account for natural changes to the wetland/fastland interface. Another portion of the southern part of the boundary has been modified to follow the western edge of Packery Channel.

TX–17, TX–17P: SHAMROCK ISLAND UNIT. The coincident boundary between TX–17 and TX–17P has been generalized and straightened, because Shamrock Island has eroded significantly and in some places there is no longer a feature for the boundary to follow. The southern boundary of both units has been moved southward to account for accretion at the south end of Shamrock Island.

TX–19: STARVATION POINT UNIT. The landward boundary of the unit has been modified to account for the eroding shoreline and natural changes to the wetland/fastland interface. The boundary has been modified to include the entire sand-sharing system of the barrier feature around Starvation Point in the unit.

TX–21: KLEBERG POINT UNIT. The landward boundary of the unit has been modified to account for the eroding shoreline and changes to the wetland/fastland interface. The boundary has been modified to include the entire sand-sharing system of the barrier feature around Kleberg Point in the unit.

Florida

The Service's review found that Unit FL–87P (the only CBRS unit in Florida that was part of this review) had changed due to natural forces. The other CBRS units in Florida were not assessed as part of this review.

FL–87P: ANCLOTE KEY UNIT. The boundaries of the unit have been extended to the north, east, and south in order to capture the entire sand-sharing system of Anclote Key and to include a portion of Anclote Key that has accreted south outside of the existing boundaries.

Request for Comments

The CBRA requires consultation with the appropriate Federal, State, and local officials on the proposed CBRS boundary modifications to reflect changes that have occurred in the size

or location of any CBRS unit as a result of natural forces (16 U.S.C. 3503(c)). We invite interested Federal, State, and local officials to review and comment on the draft maps for Delaware, South Carolina (including one unit that crosses the State boundary into North Carolina), Texas, and one unit in Florida. The Service is specifically notifying the following stakeholders concerning the availability of the draft maps and opportunity to provide comments on the proposed boundary modifications: The Chair and Ranking Member of the House of Representatives Committee on Natural Resources; the Chair and Ranking Member of the Senate Committee on Environment and Public Works; the members of the Senate and House of Representatives for the affected areas; the Governors of the affected areas, and other appropriate Federal, State, and local officials.

Federal, State, and local officials may submit written comments and accompanying data to the individual and location identified in the **ADDRESSES** section above. We will also accept digital Geographic Information System (GIS) data files that are accompanied by written comments. Comments regarding specific units should reference the appropriate CBRS unit number and unit name. Please note that boundary modifications through this process can only be made to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces, voluntary additions to the CBRS, or additions of excess Federal property to the CBRS; other requests for changes to the CBRS will not be considered at this time. We must receive comments on or before the date listed in the **DATES** section of this document.

Availability of Draft Maps and Related Information

The draft maps and digital boundary data can be accessed and downloaded from the Service's Internet site: *http://www.fws.gov/CBRA*. The digital boundary data are available in shapefile format for reference purposes only. The digital boundaries are best viewed using the base imagery to which the boundaries were drawn; this information is printed in the title block of the draft maps. The Service is not responsible for any misuse or misinterpretation of the digital boundary data.

Interested parties may also contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section above to make arrangements to view the draft maps at the Service's Headquarters office. Interested parties who are unable to access the draft maps via the Internet or at the Service's Headquarters office may contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section above, and reasonable accommodations will be made to ensure the stakeholder's ability to view the draft maps.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Gary Frazer,

Assistant Director for Ecological Services.

[FR Doc. 2013–21167 Filed 8–28–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N198; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before September 30, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and

in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Alden Jones, Old Hickory, TN; PRT–830537

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for Cabot's tragopan (*Tragopan caboti*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Peter Koplos, El Paso, TX; PRT–13175A

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Daniel Pearson, Gainesville, FL; PRT–162181

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Three Nail Ranch, Cisco, TX; PRT–08027B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Robert Martin, Temecula, CA; PRT–13908B

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Bear Creek Ranch, Kerrville, TX; PRT–13780B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Bear Creek Ranch, Kerrville, TX; PRT–13779B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: John Moody, Valley Mills, TX; PRT–13867B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: 10XXX Ranch, Glen Rose, TX; PRT–13862B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: 10XXX Ranch, Glen Rose, TX; PRT–13868B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: Sean Elliott, Sarasota, FL; PRT–13627B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for ring-tailed lemur (*Lemur catta*), black and white ruffed lemur (*Varecia variegata*), red ruffed lemur (*Varecia rubra*), black lemur (*Eulemur macaco*), cotton-top tamarin (*Saguinus oedipus*), and South American tapir (*Tapirus terrestris*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Blake Corrigan, Dallas, TX; PRT–13585B

Applicant: Larry Vaden, Huntington, WV; PRT–13916B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–21122 Filed 8–28–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO300 L91310000 PP0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of

information from those who wish to participate in the exploration, development, production, and utilization of geothermal resources on BLM-managed public lands, and on lands managed by other Federal agencies. The Office of Management and Budget (OMB) has assigned control number 1004–0132 to this information collection.

DATES: Please submit comments on the proposed information collection by October 28, 2013.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate "Attn: 1004–0132" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Allen McKee, at 801–539–4045. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Mr. McKee.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. 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 our 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.

The following information is provided for the information collection:

Title: Geothermal Resource Leasing and Geothermal Resource Unit Agreements (43 CFR Parts 3200 and 3280).

OMB Control Number: 1004–0132.

Summary: The BLM collects the information in order to decide whether or not to approve geothermal resource leases and unit agreements, process nominations for geothermal lease sales, and monitor compliance with granted approvals.

Frequency of Collection: On occasion, except for Monthly Report of Geothermal Operations (Form 3260–5), which is required monthly.

Forms:

- Form 3200–9, Notice of Intent to Conduct Geothermal Resource Exploration Operations;
- Form 3203–1, Nomination of Lands for Competitive Geothermal Leasing;
- Form 3260–2, Geothermal Drilling Permit;
- Form 3260–3, Geothermal Sundry Notice;
- Form 3260–4, Geothermal Well Completion Report; and
- Form 3260–5, Monthly Report of Geothermal Operations.

Description of Respondents: Those who wish to participate in the exploration, development, production, and utilization of geothermal resources on BLM-managed public lands, and on lands managed by other Federal agencies.

Estimated Annual Responses: 908.

Estimated Annual Burden Hours: 5,404.

Estimated Annual Non-Hour Costs: $77,110.

The estimated annual burdens to respondents are itemized in the following table:

A. Type of response	B. Number of responses	C. Hours per response	D. Total hours
43 CFR subpart 3202 Lessee Qualifications	75	1	75
43 CFR subpart 3203 Nomination of Lands for Competitive Leasing Form 3203–1	80	1	80
43 CFR subpart 3204 Noncompetitive Leasing Other Than Direct Use Leases	50	4	200
43 CFR subpart 3205 Direct Use Leasing	10	10	100
43 CFR subpart 3206 Lease Issuance	155	1	155
43 CFR subpart 3207 Lease Terms and Extensions	50	1	50
43 CFR subpart 3210 Lease Consolidation	50	1	50
43 CFR subpart 3212 Lease Suspensions and Royalty Rate Reductions	10	40	400
43 CFR subpart 3213 Lease Relinquishment, Termination, Cancellation, and Reinstatement	10	40	400
43 CFR subpart 3217 Cooperative Agreements	10	40	400
43 CFR subpart 3251 Notice of Intent to Conduct Geothermal Exploration Activities Form 3200–9	12	8	96
43 CFR subpart 3252 Geothermal Sundry Notice Form 3260–3	100	8	800
43 CFR subpart 3253 Reports: Exploration Operations	12	8	96
43 CFR subpart 3256 Exploration Operations Relief and Appeals	10	8	80
43 CFR subpart 3261 Geothermal Drilling Permit Form 3260–2	60	8	480
43 CFR subpart 3264 Geothermal Well Completion Report Form 3260–4	12	10	120
43 CFR subpart 3272 Utilization Plans and Facility Construction Permits	10	10	100
43 CFR subpart 3273 Site License Application	10	10	100
43 CFR subpart 3273 Relinquishment, Assignment, or Transfer of a Site License	22	1	22
43 CFR subpart 3274 Commercial Use Permit	10	10	100
43 CFR subpart 3276 Monthly Report of Geothermal Operations Form 3260–5	120	10	1200

A. Type of response	B. Number of responses	C. Hours per response	D. Total hours
43 CFR subpart 3281 Unit Agreements	10	10	100
43 CFR subpart 3282 Participating Area	10	10	100
43 CFR subpart 3283 Unit Agreement Modifications	10	10	100
Totals	908		5,404

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2013–21096 Filed 8–28–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP02000. L14300000.ES0000; NMNM–130294; NMNM–130295]

Notice of Realty Action: Classification for Lease and Subsequent Conveyance for Recreation and Public Purposes of Public Land for an Elementary School and Middle School, Eddy County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 81.2 acres of public land in Carlsbad, Eddy County, New Mexico. The Carlsbad Municipal School District proposes to use the land for a kindergarten to fifth grade elementary school and a sixth to eighth grade middle school.

DATES: Interested parties may submit written comments regarding the proposed classification of the land for lease and subsequent conveyance of the land, and the environmental assessment, until October 15, 2013.

ADDRESSES: Send written comments to the BLM Field Manager, Carlsbad Field Office, 620 East Greene, Carlsbad, NM 88220.

FOR FURTHER INFORMATION CONTACT: Tessa Cisneros, 575–234–5980, or *tcisnero@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Carlsbad Municipal School District has filed an application to develop the following described land as two schools with related facilities near the intersection of North Canal Street and Plum Lane and the intersection of Camp Avenue and Osborne Road in the northern area of Carlsbad. The parcels of public land are legally described as:

New Mexico Principal Meridian

T. 21 S., R. 26 E.,
sec. 24, lot 6;
sec. 26, lot 1.

The area described contains 81.2 acres, more or less, in Eddy County.

Facilities of the schools include classrooms, gymnasiums, parking lots, etc. The middle school will also include a football field, baseball field, and tennis court. Enrollment is expected to be about 600 students per school. Each school requires about 40 acres located in separate locations. Growth in the northern area of Carlsbad has put a burden on the capacity of elementary and middle schools. Future plans to increase the apartments, town houses, and housing in the area create a need for larger school facilities to accommodate the continued growth of the area. Additional detailed information pertaining to this application, plan of development, and site plan is in case files NMNM–130294 and NMNM–130295, which are located in the BLM Carlsbad Field Office at the above address. Environmental documents associated with this proposed action are available for review at the BLM Carlsbad Field Office, and on the Web at: *www.blm.gov/nm/st/fo/cfo/blm_information/nepa.html*.

The land is not required for any Federal purpose. The lease and subsequent conveyance are consistent with the BLM Carlsbad Resource Management Plan approved September 1988, and would be in the public interest. The Carlsbad Municipal School District is a political subdivision of the State of New Mexico, a qualified applicant under the R&PP Act, has not applied for more than the 640-acre limitation for public purpose uses in a year, and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and subsequent conveyance of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulations, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

The lease and subsequent conveyance, if and when issued, will be subject to provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. All valid existing rights;

4. Oil and gas lease NMNM 35602 issued to Marigold LLLP, Rio Pecos Corporation, Santo Legado LLLP, Sharbro Energy LLC, Sharbro Oil Limited Co, Tulipan LLC, Mark D. Wilson, and Yates Industries LLC, their successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 181);

5. Natural gas lease NMNM 87892 issued to Yates Petroleum Corporation, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 181);

6. Natural gas lease NMNM 91006 issued to Yates Petroleum Corporation, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 181);

7. An appropriate indemnification clause protecting the United States from claims arising out of the leasee's/patentee's use, occupancy, or occupations on the leased/patented

lands. It will also contain any other terms and conditions deemed necessary and appropriate by the Authorized Officer.

Upon publication of this notice in the **Federal Register,** the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and/or subsequent conveyance under the R&PP Act and leasing under the mineral leasing laws.

Interested parties may submit written comments on the suitability of the land for two public schools. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may also submit written comments regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision to lease and/or convey under the R&PP Act.

Any adverse comments will be reviewed by the BLM New Mexico State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the decision will become effective on October 28, 2013.

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. Only written comments submitted to the Field Manager, BLM Carlsbad Field Office, will be considered properly filed.

Authority: 43 CFR 2741.5.

Michael Tupper,

Deputy State Director, Lands and Resources.

[FR Doc. 2013–21110 Filed 8–28–13; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZG02000.L143000000 .EQ0000.TAS:14X1109.241A]

Notice of Relocation of the Bureau of Land Management's San Pedro Project Office in Sierra Vista, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the relocation of the Bureau of Land Management's (BLM) San Pedro Project Office (SPPO), temporary closure of the office during the relocation, and reopening in its new location. Both current and new offices are in the Sierra Vista area within Cochise County, Arizona.

On Tuesday, August 20, 2013, at the close of business (4 p.m.), the BLM SPPO will close for the purpose of relocation. The SPPO provides support staff for the San Pedro Riparian National Conservation Area and fire and resource management for the area. The office will reopen at 8 a.m. on Monday, August 26, 2013, at its new address. The SPPO telephone number will remain the same: 520–439–6400.

ADDRESSES: The new SPPO is located at 4070 South Avenida Saracino, Hereford, AZ 85615. From the State Road (SR) 90/92 intersection in Sierra Vista, drive south on SR92 for 7.3 miles and turn left on Avenida Saracino.

FOR FURTHER INFORMATION CONTACT: Dennis Sylvia, Associate District Manager, Gila District Office, 3201 Universal Way, Tucson, AZ 85756, or 520–258–7200.

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.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2013–21114 Filed 8–28–13; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT980300–L11200000–PH0000–24–1A]

Second Call for Nominations to the Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations to fill vacant positions on the Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC), which has two positions with terms expiring on January 12, 2014. The RAC provides advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within Utah. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than September 30, 2013.

ADDRESSES: Nominations and completed applications for the Utah RAC should be sent to Sherry Foot, Special Programs Coordinator, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101.

FOR FURTHER INFORMATION CONTACT: Sherry Foot at the address listed in the **ADDRESSES** section of this notice; by telephone: 801–539–4195; or by email: *sfoot@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 leave a message or question with the above individual. The FIRS is available 24 hours a day, 7 days a week. Replies will be received during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member, citizen-based councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands.

The two positions to be filled are in the following category:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy

and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation.

Individuals may nominate themselves or others. Nominees must be residents of Utah. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

The following must accompany all nominations:

—Letters of reference from represented interests or organizations;
—A completed RAC application; and,
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM Utah will issue a press release providing additional information for submitting nominations.

Authority: 43 CFR 1784.4–1.

Jenna Whitlock,

Associate State Director.

[FR Doc. 2013–21097 Filed 8–28–13; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–USPP–13253; PPWOUSPPS1, PPMPRPP02.Y00000]

Proposed Information Collection; United States Park Police Personal History Statement

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on January 31, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by October 28, 2013.

ADDRESSES: Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 1849 C Street NW. (Mail Stop 2601), Washington, DC 20240 (mail); or *madonna_baucum@nps.gov* (email). Please include "1024–0245" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Major Scott Fear, United States Park Police, 1100 Ohio Drive SW., Washington, DC 20242 (mail); or at *Scott_Fear@nps.gov* (email); or at (202) 610–3529 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Park Police (USPP) is a unit of the National Park Service, Department of the Interior, with jurisdiction in all National Park Service areas and certain other Federal and State lands. The USPP are highly trained, professional police officers who prevent and detect criminal activity; conduct investigations; apprehend individuals suspected of committing offenses against Federal, State, and local laws; provide protection to the President of the United States and visiting dignitaries; and provide protective services to some of the most recognizable monuments and memorials in the world.

Applicants for USPP officer positions must complete and pass a competitive written examination, an oral interview, a medical examination and psychological evaluation, and a battery of physical fitness and agility tests. As part of this application process, we use USPP Form 1 (United States Park Police Personal History Statement) to collect detailed personal history information from applicants. Investigators verify the information provided, and we use it to determine an applicant's suitability for a USPP officer position. The information we collect includes, but is not limited to:

- Personal background information, including financial data and residence history.
- Selective Service information and military data.
- References.
- Education and employment information.
- Driving record, arrest/conviction data, and criminal history information.
- Gambling information.
- Miscellaneous information, such as firearm permits, special skills, other languages, hobbies and interests, other enforcement agencies where applicant applied, and whether or not applicant previously applied for a USPP officer position.

II. Data

OMB Control Number: 1024–0245.

Title: United States Park Police Personal History Statement.

Form Number(s): USPP Form 1.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Candidates for employment as a police officer.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Annual Number of Responses: 1,000.

Estimated Completion Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 8,000.

Estimated Annual Nonhour Cost Burden: $11,100, primarily for costs associated printing and notarizing application.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 23, 2013.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–21092 Filed 8–28–13; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–891]

Certain Laundry and Household Cleaning Products and Related Packaging

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 25, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of The Clorox Company. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laundry and household cleaning products and packing thereof by reason of trademark infringement and trademark dilution. Complainant alleges that an industry in the United States exists as required by subsection (a)(2) of section 337 and that proposed respondents' unfair methods of competition and unfair acts threaten to destroy or substantially injure an industry in the United States.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *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*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 22, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laundry and household cleaning products and packaging thereof by reason of trademark infringement, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laundry and household cleaning products and packing thereof by reason of unfair methods of competition, trademark dilution and unfair acts, the threat or effect of which is to destroy or substantially injure an industry in the United States.;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: The Clorox Company, 1221 Broadway, Oakland, CA 94612.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Industrias Alen, S.A. de C.V., Blvd. Diaz Ordaz No. 1000, Col. Los Trevino, Sta. Catarina, N.L., Mexico.

Alen USA, LLC, 9326 Baythorne Drive, Houston, TX 77041.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: August 23, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–21070 Filed 8–28–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act ("CAA")

On August 23, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Utah, Northern Division, in the lawsuit entitled *United States and State of Utah* v. *Big West Oil, LLC*, 1:13–cv–00121–BCW. The settlement relates to Big West Oil LLC's ("Big West Oil") petroleum refinery located in North Salt Lake, Utah (the "BWO Refinery").

The proposed Consent Decree resolves claims of the United States and the State of Utah under the Clean Air Act and claims of the State of Utah under the Utah Air Conservation Act related to the BWO Refinery. Under the proposed Consent Decree, Big West Oil will pay a civil penalty in the amount of $157,500 to the United States and $17,500 to the State of Utah. In addition, the Consent Decree imposes emission limits on several pollutants at multiple units, requires improved flaring efficiency, and enhanced controls for leak detection and repair and benzene-

containing wastewater. The Consent Decree includes a supplemental environmental project requiring Big West Oil to install, at a cost of approximately $253,000, a laser detection system around the perimeter of the Hydrofluoric Acid ("HF") Alkylation Unit that will provide earlier detection of much lower levels of HF.

The publication of this notice opens a period for public comment on the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Utah* v. *Big West Oil, LLC*, D.J. Ref. No. 90–5–2–1–07689. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/Consent_Decrees.html*. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $35.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–21079 Filed 8–28–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Euticals, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 28, 2013, Euticals, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Methadone intermediate (9254) ...	II
Tapentadol (9780)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

In reference to Amphetamine (1100), the company plans to acquire the listed controlled substance in bulk from a domestic source in order to manufacture other controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

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 October 28, 2013.

Dated: August 22, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–21136 Filed 8–28–13; 8:45 am]

BILLING CODE 4410–09–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on September 3, 2013. The meeting will commence at 4:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

STATUS OF MEETING: Upon a vote of the Board of Directors, the meeting may be closed to the public to discuss prospective funders for LSC's 40th anniversary celebration and development activities and prospective members for LSC's 40th anniversary committees.

A verbatim transcript will be made of the closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed session falling within the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Closed

1. Approval of agenda
2. Discussion of prospective funders for LSC's 40th anniversary celebration and development activities
3. Discussion of prospective members for LSC's 40th anniversary committees
4. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov*.

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: August 26, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–21212 Filed 8–27–13; 11:15 am]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

U.S.-Canada Regulatory Cooperation Council Stakeholder Request for Comment Summer 2013

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice.

In recognition of the integrated nature of the Canadian and U.S. economies, the role of free and open trade in encouraging jobs and growth, and the benefits of increased regulatory alignment, President Obama and Prime Minister Harper announced the Canada-U.S. Regulatory Cooperation Council (RCC) in February 2011.

In December 2011, the Canadian and U.S. governments launched the initial RCC Joint Action Plan and identified specific issues where there was bi-national willingness to work together to seek greater cooperation in our regulatory approaches. A detailed work plan was developed for each of the twenty-nine (29) Joint Action Plan initiatives including specific milestones, consideration for more systemic changes, and a commitment to stakeholder engagement. We have made important progress to date, and we continue our work to implement these work plans.

At this time, the Canadian and the U.S. Governments invite public views on progress to-date and how best to address regulatory divergence between our two governments moving forward. In particular, we invite comment on certain issues/sectors that should be considered for future cooperation, including proposals to align regulatory systems, streamline bilateral cooperation, and improve stakeholder engagement.

Canada and the United States intend to identify opportunities for greater cooperation that, if undertaken in a systemic way, would secure greater alignment between our countries' regulatory systems. These collaborative mechanisms are aimed at bringing Canadian and U.S. regulatory agencies together in a more comprehensive way around the planning and coordination of work across our regulatory systems.

With the recognition that increased regulatory cooperation in no way diminishes the sovereignty of either the United States or Canada or the ability of either country to carry out its regulatory functions according to its domestic, legal policy and international commitments, one potential way to advance collaboration is enhanced cooperative arrangements between Canadian and U.S. regulatory agencies.

These cooperative arrangements could provide the framework for high-level commitment to pursue further alignment of our regulatory systems, such as identifying work-sharing opportunities, common programs, and a greater reliance on work performed under either system. These arrangements may also include opportunities for long-term and annual planning so that routine regulatory work and system advancements could be considered together.

In any approach to strengthening cooperation, regulators would have the key role in securing and implementing these arrangements between Canadian and U.S. agencies. Stakeholder input is instrumental in providing practical recommendations for future alignment opportunities, clarifying priorities, and assisting in possible pilot projects.

Below are some key areas where we believe stakeholder insights would be most helpful, though we certainly welcome input beyond these areas:

- Ideas on the appropriate role for stakeholders, and how stakeholders can best engage with Canadian and U.S. regulators on regulatory cooperation opportunities and Action Plan implementation.
- Recommendations on how to augment standards cooperation between our respective countries—both public and private sector—to support and build on the RCC work.
- Recommendations on how to institutionalize regulatory cooperation between our two countries.
- Opinions on moving forward on the next phase of Canada-U.S. regulatory cooperation through mechanisms such as agency-to-agency cooperative arrangements. We welcome ideas on how to advance them where they already exist and create them where they are non-existent.
- Detail on measurable benefits for industry, government, and/or consumers that can be quantified and shared, which occurred as a direct result of a current RCC initiative.
- Particular sectors or issues for which the RCC should consider further regulatory alignment, including emerging technologies (such as nanotechnology) that are not yet regulated. Where possible, please provide:
  - a description of the issue or unnecessary difference as well as the potential alignment opportunity;
  - the relevant regulatory agencies;
  - the relevant regulatory and/or statutory provisions for each jurisdiction (or an indication that such provisions do not yet exist in one or both jurisdictions);
  - an assessment of the net benefits of enhanced regulatory alignment (i.e. quantified costs and benefits, and the time period over which they would accrue); and
  - possible regulatory cooperation best practices that should be considered for removing unnecessary differences or duplicative practices.

Please provide your responses by Friday, October 11, 2013. Comments are welcomed through Regulations.gov (search by keywords: "Regulatory Cooperation Council" or Docket ID#: OMB–2013–0004), and the Canada Gazette. Written submissions can also be sent to the United States via *International-OIRA@omb.eop.gov* and to Canada via *RCC-CCR@pco-bcp.gc.ca*.

Your detailed input will help the RCC Secretariat and Government Agencies in finalizing implementation of the current work plans and in establishing systemic structures to strengthen regulatory cooperation efforts. We plan to explore the input we receive, and provide next steps by the end of the calendar year.

For more information on the RCC, please visit *www.trade.gov/rcc* and *www.actionplan.gc.ca/rcc*.

* * * * *

US-Canada Regulatory Cooperation Council

SUPPLEMENTARY INFORMATION

The United States and Canada enjoy the largest bilateral trading relationship in the world and almost 9,000 km (5,600 miles) of common border. We have a shared focus on: the importance of protecting health, safety, and the environment; mature and highly effective regulatory systems; and a long history of regulatory cooperation at the bi-national and international levels. This relationship represents both a strong starting point and clear motivation for deepening regulatory cooperation.

Regulatory cooperation is not about creating one regulatory system for Canada and the United States, nor does it mean that all regulatory work will be done in one country alone, or that it will always be done jointly. Instead, it is about working together where it is mutually beneficial for both countries. Lack of alignment, which can create unnecessary costs and unnecessary delays to trade, is generally not the product of fundamental differences in regulatory objectives. Instead, it is often simply the product of operating independently, without mechanisms to align our parallel regulatory systems.

Effective regulatory cooperation is about more than just regulations. It is possible that identical regulations could still contain duplicative requirements and verifications that hinder trade and increase costs. Regulatory cooperation must consider all facets of the regulatory system including regulatory policy, related programs and guidance, inspection and testing methods, and compliance and enforcement activities.

Work on the initial Regulatory Cooperation Council (RCC) Action Plan has helped to identify a number of areas where we believe deeper cooperation would generate significant benefit for regulated parties, citizens, and regulators. For example:

Standard Setting: aligning standards or sharing information concerning the standards development activities in which regulators will play an active role.

Product Reviews and Approvals: joint applications and aligned requirements, sharing in work to inform approvals.

Reliance on Outcomes of the Other Regulatory System: working together in advancing regulatory systems to achieve common outcomes, and then increasing reliance on the work conducted in the other jurisdiction.

Managing 3rd Country Import Risk: coordinating import programs and sharing information about third country technical requirements, increasing our reliance on assessment and inspection work done off-shore by the other country and at our external borders at the point of first entry into Canada or the United States.

Improving Confidence in Conformity Assessment: aligning conformity assessment practices, and reliance on international conformity assessment standards and acceptance mechanisms to achieve greater confidence in inspection and testing results.

The current range of authorities, policies, and administrative practices that support strong regulatory systems in the United States and Canada were developed in a much less integrated time. In order to maintain the strength of these systems and to meet the realities and expectations of Canadian and American citizens and industry, new and increased levels of cooperation must be considered. We therefore ask that comments and suggestions consider the full range of cooperation possibilities.

The objective is to make regulatory cooperation a cornerstone of an enhanced regulatory relationship between Canada and the United States, while leveraging the expertise and efforts of regulators in each country. We welcome stakeholder input on considerations for ongoing alignment.

Howard A. Shelanski,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2013–21061 Filed 8–28–13; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–458; NRC–2013–0190]

Entergy Operations, Inc., River Bend Station, Unit 1; Exemption

1.0 Background

Entergy Operations Inc. (Entergy, the licensee) is the holder of Facility Operating License No. NPF–47, which authorizes operation of the River Bend Station, Unit 1 (RBS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect.

The facility consists of a boiling-water reactor located in West Feliciana Parish, Louisiana.

2.0 Request/Action

Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," requires that components which penetrate containment be periodically leak tested at the "P_a," defined as the "calculated peak containment internal pressure related to the design basis accident specified either in the technical specification or associated bases." In October 2011, Entergy was contacted by the NRC concerning the station's use of the appendix J definition of P_a. The NRC noted a conflict between Entergy's interpretation of that definition of P_a and the literal reading of the definition of P_a in the regulations. Entergy stated it was defining P_a based on the long-term calculated pressure peak for the containment as a whole and not on the short-term localized pressure spike in wetwell.

By letter dated August 23, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12241A250), Entergy submitted a request for an exemption from the definition of the P_a as stated in 10 CFR part 50, appendix J, and substitute an alternate definition. The value of P_a is determined by calculating the pressure response in containment over time after a main steam line break. The original containment analysis for RBS had determined P_a to be 7.6 pounds per square inch gauge (psig). In July 1999, RBS submitted a license amendment request to increase the licensed thermal power of the station by 5 percent from 2,894 megawatts thermal (MWth) to 3,039 MWth. As part of the extended power uprate review, new calculations were performed and determined that a localized pressure spike in the wetwell occurs within a few seconds of the accident and with a pressure peak at 9.3 psig. However, the localized pressure in the wetwell quickly drops by several psig as the pressure equalizes throughout containment. This calculation also determined that the long-term peak containment pressure is 3.6 psig. To avoid a large number of procedure changes, which would be required if the value was changed, RBS elected to maintain P_a at the original (pre-extended power uprate) value of 7.6 psig, which is conservative to the calculated long-term peak value of 3.6 psig. The exemption would allow Entergy to continue to use the previously calculated value of 7.6 psig for P_a for RBS instead of the localized pressure spike in the wetwell calculated value of 9.3 psig.

The NRC staff has concluded that the use of the alternate definition for P_a meets the intent of 10 CFR part 50, appendix J because it provides testing of the primary containment parameters at a pressure that would exist throughout containment over the long term following a design basis accident.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that an exemption would be required to continue to use the alternate definition of P_a from that defined in 10 CFR part 50, appendix J.

The NRC staff examined the licensee's rationale to support the exemption request and concluded that the use the value of 7.6 psig for P_a would meet the underlying purpose of 10 CFR part 50, appendix J. Supporting the use of this alternate value is:

(1) The time for the pressure spike to occur and fall to equilibrium is 6 seconds, which is not sufficient time to release source terms from the core,

(2) the pressure spike is also localized to the wetwell area which makes up roughly 10 percent of containment,

(3) the number of containment penetrations in this area is limited. Therefore, the current P_a value of 7.6 psig meets the intent of 10 CFR part 50, appendix J by bounding the peak bulk containment pressure (3.6 psig) and assuring that leakage through the primary containment does not exceed allowable leakage rate values,

(4) the calculated peak bulk containment pressure is 3.6 psig so the Technical Specification (TS) value of 7.6 is conservative for the use of determining containment leakage, and

(5) this request is consistent with the determination that the NRC staff has reached for other licensees under similar conditions based on the same considerations.

The application for exemption may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Therefore, the NRC staff concludes that requesting exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the alternate definition of P_a may be used for the appendix J testing.

Authorized by Law

This exemption would allow Entergy to use a P_a value of 7.6 psig for appendix J testing at the RBS as discussed above. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50, appendix J. The NRC staff has determined that granting of the licensee's proposed exemption is in accordance with the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR part 50, appendix J are stated in section (I) "Introduction." The purpose is to conduct tests to assure that a) leakage through the primary reactor containment does not exceed allowable leakage rate values and b) to conduct periodic surveillance of reactor containment penetrations to support proper maintenance. No new accident precursors are created because the testing is conducted at a P_a value calculated to be representative of peak conditions throughout containment during a design basis accident. No new accident precursors are created by use of a P_a of 7.6 psig instead of 9.3 psig, thus, the probability of postulated accidents is not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The exemption would permit exclusion of the short duration spike in wetwell pressure as P_a for Appendix J testing purposes. This change to the interpretation of P_a as defined in Appendix J has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Entergy Operations, Inc., an exemption from the definition for P_a in 10 CFR part 50, appendix J for River Bend Station, Unit 1 and alternatively to continue to use a P_a value of 7.6 psig.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (78 FR 50454; August 19, 2013).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of August 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–21103 Filed 8–28–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 052–00025; NRC–2008–0252]

Inspections, Tests, Analyses, and Acceptance Criteria; Vogtle Electric Generating Plant, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of inspections, tests, analyses, and acceptance criteria (ITAAC) completion.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for ITAAC E.2.5.04.05.05.02, for the Vogtle Electric Generating Plant, Unit 3.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (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.

FOR FURTHER INFORMATION CONTACT: Ravindra Joshi, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6191, email: *Ravindra.Joshi@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Licensee Notification of Completion of ITAAC

On May 31, 2013, Southern Nuclear Operating Company, Inc. (the licensee) submitted an ITAAC closure notification (ICN) under § 52.99(c)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR), informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses for ITAAC E.2.5.04.05.05.02, and that the specified acceptance criteria are met for Vogtle

Electric Generating Plant, Unit 3 (ADAMS Accession No. ML13154A033). This ITAAC was approved as part of the issuance of the combined license, NPF–91, for this facility.

NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for Vogtle Electric Generating Plant, Unit 3, ITAAC E.2.5.04.05.05.02. This notice fulfills the staff's obligations under 10 CFR 52.99(c)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests and analyses.

The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF), dated July 10, 2013 (ADAMS Accession No. ML13191A249). The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. The ICN presents a narrative description of how the ITAAC was completed, and the NRC's ICN review process involves a determination on whether, among other things, (1) The ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) the ICN provides sufficient information to demonstrate that the acceptance criteria are met; and (3) any inspections for the ITAAC have been completed and any ITAAC findings associated with the ITAAC have been closed.

The NRC staff's determination of the successful completion of this ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If new information disputes the NRC staff's determination, this ITAAC will be reopened as necessary. The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for this ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of this ITAAC will be reflected on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html*.

Dated at Rockville, Maryland, this 22nd day of August 2013.

For the Nuclear Regulatory Commission.

Denise McGovern,

Senior Project Manager, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–21094 Filed 8–28–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 052–00026; NRC–2008–0252]

Inspections, Tests, Analyses, and Acceptance Criteria; Vogtle Electric Generating Plant, Unit 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of inspections, tests, analyses, and acceptance criteria (ITAAC) completion.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for ITAAC E.2.5.04.05.05.02, for the Vogtle Electric Generating Plant, Unit 4.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3442; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search*." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (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.

FOR FURTHER INFORMATION CONTACT: Ravindra Joshi, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6191, email: *Ravindra.Joshi@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Licensee Notification of Completion of ITAAC

On May 31, 2013, Southern Nuclear Operating Company, Inc. (the licensee) submitted an ITAAC closure notification (ICN) under § 52.99(c)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR), informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses for ITAAC E.2.5.04.05.05.02, and that the specified acceptance criteria are met for Vogtle Electric Generating Plant, Unit 4 (ADAMS Accession No. ML13154A032). This ITAAC was approved as part of the issuance of the combined license, NPF–92, for this facility.

NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for Vogtle Electric Generating Plant, Unit 4, ITAAC E.2.5.04.05.05.02. This notice fulfills the staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests and analyses.

The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF), dated July 10, 2013 (ADAMS Accession No. ML13191A333). The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. The ICN presents a narrative description of how the ITAAC was completed, and the NRC's ICN review process involves a determination on whether, among other things, (1) the ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) the ICN provides sufficient information to demonstrate that the acceptance criteria are met; and (3) any inspections for the ITAAC have been completed and any ITAAC findings associated with the ITAAC have been closed.

The NRC staff's determination of the successful completion of this ITAAC is

based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If new information disputes the NRC staff's determination, this ITAAC will be reopened as necessary. The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for this ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of this ITAAC will be reflected on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html*.

Dated at Rockville, Maryland, this 22nd day of August 2013.

For the Nuclear Regulatory Commission.

Denise McGovern,

Senior Project Manager, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–21091 Filed 8–28–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 5–7, 2013, 11545 Rockville Pike, Rockville, Maryland.

Thursday, September 5, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.—10:30 a.m.: Monticello Extended Power Uprate Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Northern States Power Company regarding the Monticello extended power uprate application and the NRC staff's associated safety evaluation.

[**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]

10:45 a.m.–12:15 p.m.: NRC Staff's Proposed Response to the Staff Requirements Memorandum on SECY–12–0081, "Risk-Informed Regulatory Framework for New Reactors" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Reactor Oversight Process (ROP) risk metrics and the proposed response to the Commission's Staff Requirements Memorandum on SECY–12–0081.

1:15 p.m.–2:45 p.m.: Draft Final Regulatory Guides 1.79 and 1.79.1 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final revision 2 to Regulatory Guide 1.79, "Preoperational Testing of Emergency Core Cooling Systems for Pressurized Water Reactors," and draft final revisions to Regulatory Guide 1.79.1, "Initial Test Program of Emergency Core Cooling Systems for Boiling Water Reactors."

3:00 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

[**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]

Friday, September 6, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Cyber Security Activities (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the NRC's cyber security activities.

[**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(3) to protect unclassified safeguards information]

10:45 a.m.–12:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments.

[**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

12:15 p.m.–12:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1:30 p.m.–2:30 p.m.: Assessment of the Quality of Selected NRC Research Projects (Open)—The Committee will hold discussions with members of the ACRS panels performing the quality assessment of the following NRC research projects:

—NUREG/CR–7026: Application of Model Abstraction Techniques to Simulate Transport in Soils

—NUREG–2121: Fuel Fragmentation, Relocation, and Dispersal During the Loss-of-Coolant Accident

2:30 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting.

[**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]

Saturday, September 7, 2013 Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports.

[**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion of matters related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry.

Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: August 23, 2013.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2013–21090 Filed 8–28–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Addition of Round-Trip Mailer Product to the Competitive Product List

AGENCY: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that it has filed a request with the Postal Regulatory Commission to add a product called "Round-Trip Mailer" to the competitive product list.

DATES: *Effective:* August 29, 2013.

FOR FURTHER INFORMATION CONTACT: John F. Rosato, 202–268–8597.

SUPPLEMENTARY INFORMATION: On July 26, 2013, the United States Postal Service® filed with the Postal Regulatory Commission (Commission) a request to add a "Round-Trip Mailer" product to its competitive product list, pursuant to Commission Order No. 1793 and 39 U.S.C. 3642. The Round-Trip Mailer product would be identical to the existing First-Class Mail® round-trip option for DVD mail on the market-dominant product list. Documents pertinent to this request are available at *http://www.prc.gov*, Docket No. MC2013–57. The Governors' Decision and the record of proceedings in connection with the above filing are reprinted below in accordance with 39 U.S.C. 3632(b)(2).

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

Decision of the Governors of the United States Postal Service on Establishment of Rate and Classification of General Applicability for Competitive Round-Trip Mailer Product (Governors' Decision No. 13–01)

July 31, 2013

Statement of Explanation and Justification

In compliance with Order No. 1763 (June 26, 2013), and pursuant to section 3642 of title 39, United States Code, the Postal Service is pursuing a request with the Postal Regulatory Commission to add a new Competitive Round-Trip Mailer product to the competitive product list. And pursuant to our authority under section 404(b) and Chapter 36 of title 39, United States Code, the Governors establish price and classification changes for the new Round-Trip Mailer product.

The new Round-Trip Mailer product allows a mailer to send a letter-shaped or flat-shaped mailpiece to a subscriber and pay postage for the return of the contents of that mailpiece. The outbound pieces must be presorted, and the return piece is single-piece. The appropriate prices for First-Class Mail Presorted and Single-Piece letters are set as the prices for Return-Trip Mailer pieces (letters or flats). Qualifying pieces must include a standard 12 cm or smaller optical disc, and may include an invoice, receipt, instructional document, or advertisement that conforms to the exceptions or suspensions in the Private Express Statutes. Qualifying pieces must weigh no more than two (2) ounces.

We have reviewed management's analysis of this proposal. We have evaluated the new price and classification changes in this context in accordance with 39 U.S.C. §§ 3632–3633 and 39 C.F.R. §§ 3015.5 and 3015.7. We approve the changes, finding that they are appropriate, and are consistent with the regulatory criteria, as indicated by management.

Order

We approve of filing with the Postal Regulatory Commission appropriate notice of these classification and rate changes and requesting the needed addition to the competitive product list. The changes in price and class set forth therein shall be effective September 30, 2013, assuming the Commission approves the required addition to the product list under 39 C.F.R. § 3020 Subpart B.

By The Governors:

Mickey D. Barnett
Chairman

CERTIFICATION OF GOVERNORS' VOTE ON THE GOVERNORS' DECISION NO. 13–01

Consistent with 39 USC 3632(a), I hereby certify the that following Governors voted at the July 31, 2013, Board Meeting in favor of Governors' Decision No. 13–01:

Mickey D. Barnett
James H. Bilbray
Louis J. Giuliano
Dennis J. Toner
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Date: July 31, 2013
Julie S. Moore
Secretary of the Board of Governors

[FR Doc. 2013–21160 Filed 8–28–13; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30673; 812–14129]

Equinox Funds Trust and Equinox Institutional Asset Management LP; Notice of Application

August 23, 2013.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Equinox Funds Trust (the "Trust") and Equinox Institutional Asset Management LP (the "Initial Adviser") (collectively, "Applicants").

DATES: *Filing Dates:* The application was filed on March 7, 2013 and amended on August 9, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 18, 2013, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Phillip Liu, Equinox Institutional Asset Management LP, 47 Hulfish Street, Suite 510, Princeton, NJ 08542; Daniel Prezioso, Equinox Fund Management, LLC, 1775 Sherman Street, Suite 2500, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel, at (202) 551–6728, or Dalia Osman Blass, Assistant Director, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company that offers one or more series of shares (each a "Fund"), each with its own investment objectives, policies and restrictions.[1] The Initial Adviser is, and any future Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (each an "Investment Advisory Agreement" and collectively, the "Investment Advisory Agreements").[2] Each Investment Advisory Agreement was approved or will be approved by the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust, the Subadvised Fund, or the Adviser ("Independent Trustees") and by the shareholders of the relevant Subadvised Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act.[3]

2. Pursuant to the terms of the Advisory Agreement, the Adviser serves as the investment adviser and makes the investment decisions for each Fund and continuously reviews, supervises and administers each Fund's investment program, subject to the supervision of, and policies established by, the Board. For its services to a Subadvised Fund, the Adviser receives an investment advisory fee from the Subadvised Fund specified in the Advisory Agreement. The investment advisory fee for a Subadvised Fund is calculated daily and paid monthly at an annual rate based on the average daily net assets of such Subadvised Fund. Pursuant to the terms of the Advisory Agreement, the Adviser also may, subject to the approval of the Board, including a majority of the Independent Trustees, and shareholders of the applicable Subadvised Fund (if required by applicable law), delegate certain responsibilities to one or more subadvisers ("Sub-Advisers"). The Trust and the Adviser have entered into investment sub-advisory agreements ("Sub-Advisory Agreements") with a number of Sub-Advisers to serve as Sub-Advisers to the Fund.[4] Each Sub-Adviser is, and any future Sub-Adviser will be, an investment adviser as defined in Section 2(a)(20) of the 1940 Act. Each Sub-Adviser will be either registered with the Commission as an investment adviser under the Advisers Act or not subject to such registration. The Adviser will have the overall responsibility for the management of the assets of each Subadvised Fund and, with respect to each Subadvised Fund, the Adviser's responsibilities will include, for example, recommending the removal or replacement of Sub-Advisers, and determining the portion of that Subadvised Fund's assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time. The Adviser will evaluate, select and recommend Sub-Advisers to manage the assets (or portion thereof) of a Subadvised Fund. The Adviser will also monitor and review each Sub-Adviser and its performance and its compliance with

[1] Applicants request that the relief sought herein apply to the Applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that intends to rely on the requested order in the future and: (a) is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with the Initial Adviser or its successors (each an "Adviser"); (b) uses the multi-manager or manager of managers structure described in the application ("Manager of Managers Structure"); and (c) complies with the terms and conditions set forth in the application (together with any Fund that uses the Manager of Managers Structure, each a "Subadvised Fund" and collectively, the "Subadvised Funds"). The only existing registered open-end investment company that currently intends to rely on the requested order is named as an Applicant. The Equinox EquityHedge U.S. Strategy Fund is the only existing Fund that currently uses one or more Sub-Advisers and is, therefore, a Subadvised Fund. For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Subadvised Fund contains the name of a Sub-Adviser, the name of the Adviser that serves as the primary adviser to the Subadvised Fund, or a trademark or trade name that is owned by the Adviser, will precede the name of the Sub-Adviser.

[2] Each future investment advisory agreement between an Adviser and a Subadvised Fund is also included in the term "Investment Advisory Agreement".

[3] The term "Board" also includes the board of trustees or directors of a future Subadvised Fund.

[4] The Trust and the Adviser have entered into Sub-Advisory Agreements on behalf of the Equinox EquityHedge U.S. Strategy Fund with the following six (6) Sub-Advisers: (i) Confluence Investment Management; (ii) Equity Investment Corporation; (iii) Logan Capital Management, Inc.; (iv) Polen Capital Management, LLC; (v) Turner Investments, L.P.; and (vi) Quantum Capital Management.

that Subadvised Fund's investment policies and restrictions. The Adviser may also directly invest the assets of a Subadvised Fund not otherwise allocated to Sub-Advisers. A Sub-Adviser of a particular Subadvised Fund will receive from the Adviser investment sub-advisory fees (paid by the Adviser out of the advisory fees that the Adviser receives from such Subadvised Fund) calculated daily and paid monthly at the annual rate based on the average daily net assets allocated to such Sub-Adviser, which may be all of the assets or a portion of the assets of such Subadvised Fund ("Sub-Advisory fees"). Accordingly, the Sub-Advisory fees payable to a Sub-Adviser will be calculated in the same manner as the investment advisory fees paid to the Adviser but not necessarily at the same rate or based on the entire amount of a Subadvised Fund's assets since the Adviser may allocate a portion of a Subadvised Fund's assets to one or more Sub-Adviser and negotiate different rates with each Sub-Adviser of a Subadvised Fund. Each Sub-Adviser will bear its own expenses of providing investment management services to the relevant Subadvised Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to select certain Sub-Advisers to manage all or a portion of the assets of a Fund pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or a Subadvised Fund or the Adviser, other than by reason of serving as a Sub-Adviser to Subadvised Funds ("Affiliated Sub-Adviser").

4. Applicants also request an order exempting the Subadvised Funds from certain disclosure requirements described below that may require the Applicants to disclose fees paid to each Sub-Adviser by the Adviser or a Subadvised Fund. Applicants seek an order to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of each Subadvised Fund's net assets) only: (a) The aggregate fees paid to the Adviser and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, the "Aggregate Fee Disclosure"). A Subadvised Fund that employs an Affiliated Sub-Adviser will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are best suited to achieve the Subadvised Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose unnecessary delays and expenses on the Subadvised Funds and may preclude the Subadvised Funds from acting promptly when the Adviser and Board consider it appropriate to hire Sub-Advisers or amend Sub-Advisory Agreements. Applicants note that the Investment Advisory Agreements and any Sub-Advisory Agreement with an Affiliated Sub-Adviser (if any) will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. If new Sub-Advisers are hired, the Subadvised Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures ("Modified Notice and Access Procedures"): (a) Within 90 days after a new Sub-Adviser is hired for any Subadvised Fund, that Subadvised Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[5] and (b) the Subadvised Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in this Application, a proxy solicitation to approve the appointment of new Sub-

[5] A "Multi-manager Notice" will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Exchange Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Funds.

A "Multi-manager Information Statement" will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested amended and restated order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the applicable Board would comply with the requirements of Sections 15(a) and 15(c) of the 1940 Act before entering into or amending Sub-Advisory Agreements.

8. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Funds because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's "posted" amounts if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the requested relief will also encourage Sub-Advisers to negotiate lower sub-advisory fees with the Adviser if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order, the operation of the Subadvised Fund in the manner described in the Application will be approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act or, in the case of a Subadvised Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance, and effect of any order granted pursuant to the Application. In addition, each Subadvised Fund will hold itself out to the public as employing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Subadvised Funds will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Sub-Adviser change is proposed for a Subadvised Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

8. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

9. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

10. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets and, subject to review and approval of the Board, will: (i) set the Subadvised Fund's overall investment strategies; (ii) evaluate, select, and recommend Sub-Advisers to manage all or a part of the Subadvised Fund's assets; (iii) when appropriate, allocate and reallocate the Subadvised Fund's assets among Sub-Advisers; (iv) monitor and evaluate the investment performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure that Sub-Advisers comply with the Subadvised Fund's investment objective, policies and restrictions.

11. No Trustee or officer of the Trust or of a Subadvised Fund or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

12. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

14. For Subadvised Funds that pay fees to a Sub-Adviser directly from fund assets, any changes to a Sub-Advisory Agreement that would result in an increase in the total management and advisory fees payable by a Subadvised Fund will be required to be approved by the shareholders of the Subadvised Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–21055 Filed 8–28–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9445; 34–70251; File No. 265–27]

SEC Advisory Committee on Small and Emerging Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public meeting on Tuesday, September 17, 2013, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. The meeting will be webcast on the Commission's Web site at *www.sec.gov*. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

DATES: The public meeting will be held on Tuesday, September 17, 2013. Written statements should be received on or before September 13, 2013.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE., Washington, DC. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acsec.shtml*); or
- Send an email message to *rule-comments@sec.gov*. Please include File Number 265–27 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acsec.shtml*).

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Johanna V. Losert, Special Counsel, at (202) 551–3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Keith Higgins, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: August 23, 2013.

Elizabeth M. Murphy,

Committee Management Officer.

[FR Doc. 2013–21046 Filed 8–28–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70247; File No. SR–CME–2013–16]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Modifications to Its OTC IRS Clearing Offering Including New Fees and the Addition of Four New Currencies and Two New Rate Options

August 23, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2013, Chicago Mercantile Exchange Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by CME. 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

CME is filing proposed rules changes that are limited to its business as a derivatives clearing organization. More specifically, the proposed rule changes would modify the fee schedule that applies to its over-the-counter ("OTC") interest rate swap ("IRS") clearing offering and would also make changes to current CME IRS rules to facilitate the addition of four new currencies and two new rate options.

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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission and currently offers clearing services for many different futures and swaps products. With this filing, CME proposes to modify the fee schedule (the "Fee Schedule") that applies to over-the-counter ("OTC") Interest Rate Swaps ("IRS") cleared at CME and also proposes to make certain changes to current CME Rule 90102E to facilitate the addition of four new currencies to its IRS offering, specifically, the Czech Krona, Hungarian Forint, Polish Zloty and the South African Rand, and to add two new rate option for its IRS clearing offering, the Canadian Dollar OIS and the USD-Federal Funds-H.15–LIBOR–BBA Rate Option. Finally, CME will also be making certain conforming changes to its IRS Manual of Operations for CME Cleared Interest Rate Swaps to make certain operational changes to address the changes described above. Although these changes will be effective on filing, CME plans to operationalize the proposed fee changes on August 19, 2013 and the proposed changes to Rule 90102E on August 26, 2013.

The changes that are described in this filing impact fees and make certain other adjustments as described above that are limited to CME's business as a derivatives clearing organization clearing products under the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC") and do not materially impact CME's credit default swap clearing business in any way. CME notes that it has already submitted the proposed rule changes that are the subject of this filing to its primary regulator, the CFTC, in CME Submissions 13–310, 13–313 and 13–315.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[3] More specifically, the first aspect of the proposed rule changes establish or change a member due, fee or other charge imposed by CME under Section 19(b)(3)(A)(ii)[4] of the Securities Exchange Act of 1934 and Rule 19b–4(f)(2)[5] thereunder. CME believes that the proposed fee change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

regulations thereunder and, in particular, to 17A(b)(3)(D),[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among participants. The proposed changes apply to all market participants clearing IRS at CME. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues.

Second, the proposed rule changes also include changes to facilitate the addition of four new currencies and two new rate option choices associated with its IRS offering. These enhancements will offer investors an expanded choice of products for IRS clearing and will promote central clearing of swaps under the CFTC's jurisdiction. As such, CME believes the changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[7] Furthermore, the proposed changes are limited in their effect to swaps products offered under CME's authority to act as a derivatives clearing organization. These products are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a derivatives clearing organization clearing swaps that are not security-based swaps; CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to swaps products offered under CME's authority to act as a derivatives clearing organization, the proposed changes are also properly classified as effecting a change in an existing service of CME that:

(a) primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, and swaps that are not security-based swaps or mixed swaps; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act[8] and are properly filed under Section 19(b)(3)(A)[9] and Rule 19b–4(f)(4)(ii)[10] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The rule changes simply modify CME's current IRS fee schedule to include two additional maturity buckets for short-dated IRS and make changes to another CME IRS rule to facilitate the addition of four new currencies and two new rate options for IRS.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from 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)[11] of the Act and paragraphs (f)(2) and (f)(4)(ii) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 No. SR–CME–2013–16 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–CME–2013–16. 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 or 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html*.

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–CME–2013–16 and should be submitted on or before September 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–21035 Filed 8–28–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(4)(ii).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2) and 17 CFR 240.19b–4(f)(4)(ii).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13729 and # 13730]

Wisconsin Disaster # WI–00047

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Wisconsin dated 08/21/2013.

Incident: Severe storms and tornadoes.

Incident Period: 08/06/2013 through 08/07/2013.

Effective Date: 08/21/2013.

Physical Loan Application Deadline Date: 10/21/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 05/21/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance. U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Outagamie.

Contiguous Counties:

Wisconsin: Brown, Calumet, Shawano, Waupaca, Winnebago.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.937
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.875
Non-Profit Organizations without Credit Available Elsewhere	2.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 13729 C and for economic injury is 13730 0.

The State which received an EIDL Declaration # is Wisconsin.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 21, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–21116 Filed 8–28–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13699 and # 13700]

Iowa Disaster Number IA–00053

AGENCY: U.S. Small Business Administration.

AMENDMENT 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4135–DR), dated 7/31/2013.

Incident: Severe Storms, Tornadoes, and Flooding

Incident Period: 6/21/2013 through 6/28/2013.

Effective Date: 8/20/2013.

Physical Loan Application Deadline Date: 9/30/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 5/01/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance. U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of IOWA, dated 7/31/2013, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Audubon, Grundy.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2013–21152 Filed 8–28–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13724]

California Disaster #CA–00208 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 08/19/2013.

Incident: Mountain Fire.

Incident Period: 07/15/2013 through 07/30/2013.

Effective Date: 08/19/2013.

EIDL Loan Application Deadline Date: 05/19/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Riverside

Contiguous Counties:

California: Imperial, Orange, San Bernardino, San Diego.

Arizona: La Paz.

The Interest Rates are:

	Percent
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for economic injury is 137240

The States which received an EIDL Declaration # are California, Arizona.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: August 19, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–21154 Filed 08/28/2013 at 8:45 a.m.;

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8443]

Presidential Permits: NOVA Chemicals Inc. Line 20 Facilities

August 21, 2013.

AGENCY: Department of State.

ACTION: Notice of Issuance of a Presidential Permit for NOVA Chemicals Inc. Line 20 Facilities.

SUMMARY: The Department of State issued a Presidential Permit to NOVA Chemicals Inc. ("NOVA Inc.") on August 16, 2013, authorizing NOVA Inc. to connect, operate, and maintain pipeline facilities at the border of the United States and Canada for the export of natural gas liquids from the United States to Ontario, Canada. The Line 20 facilities were constructed in 1986 and operated most recently by another entity for the transport of natural gas pursuant to a Presidential Permit issued by the Federal Energy Regulatory Commission. The Department of State determined that issuance of this permit would serve the national interest. In making this determination and issuing the permit, the Department of State complied with the procedures required under Executive Order 13337, and provided public notice and opportunity for comment.

FOR FURTHER INFORMATION CONTACT: Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State (ENR/EDP/EWA) 2201 C St. NW., Ste. 4843 Washington DC 20520 Attn: Michael Brennan Tel: 202–647–7553.

SUPPLEMENTARY INFORMATION: Additional information concerning the NOVA Line 20 pipeline and documents related to the Department of State's review of the application for a Presidential Permit can be found at *http://www.state.gov/e/enr/applicant/applicants/c54799.htm*. Following is the text of the issued permit:

Presidential Permit Authorizing NOVA Chemicals, Inc. To Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as Deputy Secretary of State, including those authorities under Executive Order 13337, 69 FR 25299 (2004), and Department of State Delegation of Authority 245–1 of February 13, 2009; having considered the environmental effects of the proposed action consistent with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.) and other statutes relating to environmental concerns; having considered the proposed action consistent with the National Historic Preservation Act (80 Stat. 917, 16 U.S.C. 470f et seq.); and having requested and received the views of members of the public and various federal agencies; I hereby grant permission, subject to the conditions herein set forth, to NOVA Chemicals, Inc. (hereinafter referred to as the "permittee"), which is incorporated in the State of Delaware, to connect, operate, and maintain pipeline facilities at the border of the United States and Canada in St. Clair County, Michigan, for the export of natural gas liquids from the United States to Canada.

The term "facilities" as used in this permit means the relevant portion of the pipeline and any land, structures, installations or equipment appurtenant thereto.

The term "United States facilities" as used in this permit means those parts of the facilities located in the United States. The United States facilities consist of approximately 1,350 feet of 12-inch diameter pipeline extending from a block valve site in St. Clair County, Michigan to the international border between the United States and Canada, as well as certain appurtenant facilities.

This permit is subject to the following conditions:

Article 1. (1) The United States facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any amendment thereof. This permit may be terminated or amended at any time at the discretion of the Secretary of State or the Secretary's delegate or upon proper application therefor. The permittee shall make no substantial change in the United States facilities, the location of the United States facilities, or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

(2) The construction, connection, operation and maintenance of the United States facilities shall be in all material respects as described in the permittee's August 7, 2012 application for a Presidential Permit (the "Application"), as amended, and the Department of State's Finding of No Significant Impact dated January 18, 2013. In the event of any discrepancy among these documents, construction, connection, operation and maintenance of the United States facilities shall be in all material respects as described in the most recent approved document unless otherwise determined by the Department of State.

Article 2. The standards for, and the manner of, the construction, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of appropriate federal, state and local agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 3. The permittee shall comply with all applicable federal, state, and local laws and regulations regarding the connection, operation, and maintenance of the United States facilities and with all applicable industrial codes. The permittee shall obtain all requisite permits from state and local government entities and relevant federal agencies.

Article 4. Connection, operation, and maintenance of the United States facilities hereunder shall be subject to the limitations, terms, and conditions issued by any competent agency of the United States Government. The permittee shall continue the operations hereby authorized and conduct maintenance in accordance with such limitations, terms, and conditions. Such limitations, terms, and conditions could address, for example, environmental protection and mitigation measures, safety requirements, export regulations, measurement capabilities and procedures, requirements pertaining to the pipeline's capacity, and other pipeline regulations.

Article 5. The permittee shall notify the Commissioner of Customs and Border Protection immediately if it plans to inject foreign merchandise into the United States facilities, or it if plans to seek an amendment to this permit authorizing use of the United States facilities for any imports of petroleum or petroleum products into the United States.

Article 6. Upon the termination, revocation, or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary's delegate, the United States facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the permittee within such time as the Secretary of State or the Secretary's delegate may specify, and upon failure of the permittee to remove, or to take such other action with respect to, this portion of the United States facilities as ordered, the Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed or other action taken, at the expense of the permittee;

and the permittee shall have no claim for damages by reason of such possession, removal, or other action.

Article 7. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. Any transfer of ownership or control of the United States facilities or any part thereof shall be immediately notified in writing to the United States Department of State, including the submission of information identifying the transferee. This permit shall remain in force subject to all the conditions, permissions and requirements of this permit and any amendments thereto unless subsequently terminated or amended by the Secretary of State or the Secretary's delegate.

Article 9. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary and appropriate.

(2) The permittee shall save harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the facilities, including but not limited to environmental contamination from the release or threatened release or discharge of hazardous substances and hazardous waste.

(3) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation, and in compliance with prevailing environmental standards and regulations.

Article 10. The permittee shall take all necessary measures to prevent or mitigate adverse environmental impacts or disruption of archeological resources in connection with construction, connection, operation and maintenance of the United States facilities. Such measures will include any mitigation and control plans that are already approved or that are approved in the future by the Department of State or other relevant federal agencies, and any other measures deemed prudent by the permittee.

Article 11. The permittee shall file with the appropriate agencies of the United States Government such statements or reports under oath with respect to the United States facilities, and/or permittee's activities and operations in connection therewith, as are now or may hereafter be required under any laws or regulations of the United States Government or its agencies. The permittee shall file electronic Export Information where required.

Article 12. The permittee shall provide information upon request to the Department of State with regard to the United States facilities. Such requests could include, for example, information concerning current conditions or anticipated changes in ownership or control, construction, connection, operation, or maintenance of the U.S. facilities.

In witness whereof, I, the Deputy Secretary of State have hereunto set my hand this 16th day of August 2013, in the City of Washington, District of Columbia.

William J. Burns,

Deputy Secretary of State.

Dated: August 21, 2013.

Michael F. Brennan,

Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2013–21165 Filed 8–28–13; 8:45 am]

BILLING CODE 4710–09–P

TENNESSEE VALLEY AUTHORITY

Dam Safety Modifications at Cherokee, Fort Loudoun, Tellico, and Watts Bar Dams

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). TVA has decided to adopt the preferred alternative in its final environmental impact statement (EIS) for the dam safety modifications at Cherokee, Fort Loudoun, Tellico, and Watts Bar Dams. The notice of availability (NOA) of the *Final Environmental Impact Statement for Dam Safety Modifications at Cherokee, Fort Loudoun, Tellico, and Watts Bar Dams* was published in the **Federal Register** on May 31, 2013. This alternative, Permanent Modifications of Dam Structures: Combination of Concrete Floodwalls and Earthen Embankments, will protect the four dams against failure during the Probable Maximum Flood (PMF) event while minimizing the adverse effects to the appearance and recreational use of the dam reservations.

FOR FURTHER INFORMATION CONTACT: Charles P. Nicholson, NEPA Compliance Manager, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11D, Knoxville, Tennessee 37902–1499; telephone 865–632–3582, or email *cpnicholson@tva.gov*.

SUPPLEMENTARY INFORMATION: TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. A fundamental part of this mission was the construction and operation of an integrated system of dams and reservoirs. As directed by the TVA Act, TVA uses this system to manage the water resources of the Tennessee River for the purposes of navigation, flood control, power production. Consistent with these purposes, TVA operates the system to provide a wide range of other benefits.

As the Federal agency responsible for the operation of numerous dams, and consistent with the Federal Guidelines for Dam Safety issued by the Federal Emergency Management Agency, TVA prepares for the worst case flooding event in order to protect against dam failure, loss of life, major property damage, and impacts to critical facilities. This worst case flooding event is known as the PMF, defined as the flood that may be expected from the most severe combination of critical meteorological and hydrological conditions that are reasonably possible in a particular area. Nuclear Regulatory Commission (NRC) nuclear plant operating regulations also require that nuclear plants be protected against the adverse effects of the PMF. TVA periodically reviews and revises its calculations of PMF elevations. During the most recent review (completed in 2008), TVA determined that the updated PMF elevations at Cherokee, Fort Loudoun, Tellico, and Watts Bar Dams, as well as at TVA's Watts Bar and

Sequoyah Nuclear Plants, were higher than previously calculated.

The differences in PMF elevations are sufficient to indicate that a PMF event could cause water to flow over the top of the dams, even with the floodgates wide open, possibly resulting in dam failure. Failure of one or more of these dams would result in extensive damage to buildings, infrastructure, property, and natural resources, as well as potential personal injury and loss of life.

In 2009, TVA implemented temporary measures at the four dams to remain consistent with Federal guidelines and to comply with nuclear operating regulations for safe operations of the river and reservoir system, and to minimize the potential effects of the PMF. These temporary measures consisted of raising the heights of the four dams by installing interconnected, fabric lined HESCO Concertainer® units filled with No. 10 crushed stone on top of the earthen embankments of each dam. These HESCO barriers raised the height of each dam by 3 to 8 feet and provided additional floodwater storage capacity. The length of the HESCO barrier floodwalls totaled approximately 19,100 feet (7,000 feet at Cherokee; 4,500 feet at Fort Loudoun; 6,000 feet at Tellico; and 1,600 feet at Watts Bar). TVA also installed a permanent concrete apron on approximately 2 acres of the downstream earthen embankment of Watts Bar Dam.

In a January 25, 2012 letter from NRC to TVA, NRC stated that the HESCO barriers were not capable of resisting impacts from large debris during a flood and are not acceptable as a long-term solution to protecting the dams, and downstream nuclear plants, during the PMF. At the time the NRC letter was received, TVA had not made any decisions about whether or how to replace the HESCO barriers. After receiving the letter, TVA made the commitment to NRC to develop and implement permanent dam safety modifications to replace the temporary measures at the four dams.

Alternatives Considered

TVA considered three alternatives in the Draft EIS and the Final EIS. These alternatives are:

Alternative A—No Action. TVA would leave the HESCO barriers in place and replace or maintain them as necessary. The major maintenance activity would be the replacement of the geotextile liners on approximately five-year cycles. This would require removing the crushed stone from the containers, removing and replacing the liners, and then refilling the containers with the previously used crushed stone. The HESCO barriers would continue to minimize the potential for failure of the four dams and prevent an increase in flooding at downstream locations, including TVA's nuclear plants, during the PMF. As stated in the above-mentioned NRC letter, this is not a long-term solution acceptable to NRC. It does, however, represent the current baseline conditions and is therefore the appropriate No Action alternative.

Alternative B—Permanent Modifications of Dam Structures: Combination of Concrete Floodwalls and Earthen Embankments. TVA would raise the heights of the dams as follows: Cherokee—6.6 feet; Fort Loudoun—4.8 to 6.0 feet; Tellico—4.8 feet, and Watts Bar—3.5 feet. These heights are approximately two feet greater than the PMF elevations because of the need to maintain adequate freeboard to minimize overtopping by waves. The length of floodwall and raised earthen embankment at each dam would be as follows: Cherokee—5,300 feet of floodwall and 3,150 feet of embankment; Fort Loudoun—3,800 feet of floodwall and 250 feet of embankment; Tellico—3,400 feet of floodwall and 2,450 feet of embankment; and Watts Bar—1,650 feet of embankment. At Cherokee, TVA would also install about 40 post-tensioned anchors into the concrete portion of the dam, construct a 13.6-foot tall concrete floodwall on a 93-foot section of the dam, and raise the height of a 400-foot long section of the south spillway training wall by up to 40 feet. At Watts Bar, TVA would also strengthen an existing concrete floodwall on the east end of the dam. TVA identified Alternative B as its preferred alternative in both the Draft EIS and Final EIS.

Alternative C—Permanent Modification of Dam Structures: All Concrete Floodwalls. TVA would replace the HESCO barriers with concrete floodwalls in approximately the same locations. The heights of the floodwalls would be the same as the permanent modifications proposed under Alternative B. The additional modifications to Cherokee and Watts Bar dams described under Alternative B would be implemented under Alternative C.

Public Involvement

TVA published a notice of intent to prepare the EIS in the **Federal Register** on June 14, 2011. TVA sought input from Federal and state agencies, Federally recognized Indian tribes, local organizations and individuals during the 55-day public scoping period. Open house meetings were held in Lenoir City and Louisville, Tennessee. TVA received a total of 248 scoping comment letters; primary topics included impacts to scenery, land use, and recreation at the dams; the methodology used to calculate the PMF; and alternatives to the proposed permanent dam modifications.

The notice of availability (NOA) of the Draft EIS was published in the **Federal Register** on September 28, 2012. TVA held a public meeting on the Draft EIS on October 22, 2012 and accepted comments until November 19, 2012. TVA received 21 comment submissions on the Draft EIS, and the Final EIS contains responses to these comments. After considering the comments and the results of additional engineering studies conducted after publication of the Draft EIS, TVA made several modifications to Alternative B. These modifications included the use of earthen embankments in place of some segments of concrete floodwalls at Cherokee and Fort Loudoun. Earthen embankments would also be constructed at several segments at Cherokee, Tellico, and Watts Bar Dams identified in the Draft EIS as suitable for either floodwalls or embankments. The increased use of earthen embankments would reduce the visual impacts of floodwalls and restrictions on recreational use of the dam reservations. It would also eliminate the need for gap closure barriers between segments of floodwalls. An additional modification to Alternative B is the elevation of the surface of roadways adjacent to floodwall segments on saddle dams at Cherokee and Tellico. This measure would reduce the effective height of the floodwalls for recreational users walking the roads and eliminate obstructions to their views of the reservoirs.

The NOA for the Final EIS was published in the **Federal Register** on May 31, 2013.

Environmentally Preferred Alternative

Alternative A—No Action would likely result in the lowest level of environmental impacts. The construction-related impacts resulting from the two action alternatives, Alternatives B and C, would be largely avoided. The current adverse impacts to visual resources and recreational use of the dam reservations would continue. Of the two action alternatives, Alternative B would result in greater impacts during construction but reduced long-term impacts. Based on consideration of the overall impacts, the difference between the two action alternatives is small and Alternative B is

environmentally preferable over Alternative C.

Decision

TVA has decided to implement the preferred alternative identified in the Final EIS, Alternative B—Permanent Modifications of Dam Structures: Combination of Concrete Floodwalls and Earthen Embankments. This alternative was selected over Alternative C—Permanent Modification of Dam Structures: All Concrete Floodwalls because of the reduced long-term impacts and slightly lower construction costs. Alternative B also eliminates the need for gap closure barriers between floodwall segments.

Mitigation Measures

TVA would use appropriate best management practices during all phases of construction and maintenance associated with the proposed action. TVA would also establish the necessary traffic controls such as use of warning signs, flagmen, and lane closures during construction and maintenance activities in order to minimize traffic and safety impacts. In order to minimize impacts to potential habitat for the endangered Indiana bat, TVA would comply with the terms of the Memorandum of Agreement with the U.S. Fish and Wildlife Service. These terms include delaying the removal of suitable roost trees where feasible until after July 31, surveying for the presence of the bats before removing suitable roost trees prior to July 31, and the mitigation payment of $13,986 to the Indiana Bat Conservation Fund.

Dated: July 2, 2013.

John J. McCormick, Jr.,

Senior Vice President, River Operations & Renewables.

[FR Doc. 2013–21134 Filed 8–28–13; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee; Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Commercial Space Transportation Advisory Committee (COMSTAC).

DATES: The teleconference will take place on Tuesday, September 24, 2013. The teleconference will begin at 1:00 p.m. Eastern Time and will last approximately one hour. The presentation and call-in number will be posted at least one week in advance at *http://www.ast.faa.gov/*.

FOR FURTHER INFORMATION CONTACT: Paul Eckert (AST–3), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–8655; Email *paul.eckert@faa.gov*. Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/*.

SUPPLEMENTARY INFORMATION: The purpose of this teleconference is to assist the FAA in its development of guidelines for the safety of occupants of commercial suborbital and orbital spacecraft. On July 31, 2013, the FAA submitted to COMSTAC a draft document on Established Practices for Human Space Flight Occupant Safety for its review and comment. The document is intended to continue the conversation that we have had with COMSTAC on commercial human space flight occupant safety. The document provides what we believe are occupant safety measures that have historically proven to be worth doing for most human space flight system concepts. We plan to submit to COMSTAC a companion document in mid-September that will provide rationale for each established practice in the draft. In this teleconference the FAA will introduce these two documents, entertain early feedback from COMSTAC members, and discuss a way ahead.

Interested members of the public may submit relevant written statements for COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Paul Eckert, Designated Federal Officer (the person listed in the **FOR FURTHER INFORMATION CONTACT** section), in writing (mail or email) by September 17, 2013. This way the information can be made available to COMSTAC members for their review and consideration before the teleconference. Written statements should be supplied in the following formats: one hard copy with original signature or one electronic copy via email.

Individuals who plan to participate and need special assistance should inform the person listed in the **FOR FURTHER INFORMATION CONTACT** section in advance of the meeting.

Issued in Washington, DC, on August 16, 2013.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2013–21126 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee; Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, October 9, 2013, from 8:00 a.m. to 5:00 p.m., and Thursday, October 10, from 8:30 a.m. to 2:00 p.m., at the National Housing Center, 1201 15th Street NW., Washington, DC 20005. This will be the 58th meeting of the COMSTAC.

The proposed schedule for the COMSTAC working group meetings on October 9 is below:

—Operations (8:00 a.m.–10:00 a.m.)
—Business/Legal (10:00 a.m.–12:00 a.m.)
—Systems (1:00 p.m.–3:00 p.m.)
—International Policy (3:00 p.m.–5:00 p.m.)

The full Committee will meet on October 10. The meeting will address general issues relevant to the commercial space transportation industry, as well as reports and recommendations from the working groups.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Larry Scott,

(the Contact Person listed below) in writing (mail or email) by September 25, 2013, so that the information can be made available to COMSTAC members for their review and consideration before the October 9 and 10 meetings. Written statements should be supplied in the following formats: One hard copy with original signature and/or one electronic copy (no macros in word doc) via email.

Subject to approval, a portion of the October 10th meeting will be closed to the public (starting at approximately 2:00 p.m.).

An agenda will be posted on the FAA Web site at *www.faa.gov/go/ast*. For specific information concerning the times and locations of the COMSTAC working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Persons listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Scott, telephone (202) 267–7982; email *larry.Scott@faa.gov*, FAA Office of Commercial Space Transportation (AST–3), 800 Independence Avenue SW., Room 331, Washington, DC 20591.

Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/*.

Issued in Washington, DC, August 20, 2013.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2013–21151 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee; Closed Session

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Special Closed Session.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), and 5 U.S.C. 552b(c), notice is hereby given of a special closed session of the Commercial Space Transportation Advisory Committee (COMSTAC). The special closed session will be an administrative session for the Committee members to review the provisions of the COMSTAC Charter; the Federal Advisory Committee Act (FACA); 41 CFR, Parts 101–6 and 102–3; and the Department of Transportation and FAA Orders concerning advisory committee management. The meeting will take place on Thursday, October 10, 2013, at the National Housing Center, 1201 15th Street NW., Washington, DC 20005, from 2:00 p.m. until 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Scott (AST–3), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–7982, email *larry.scott@faa.gov*.

Issued in Washington, DC, August 20, 2013.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2013–21145 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[DOT Docket No. NHTSA–2013–0001]

Uniform Procedures for State Highway Safety Grant Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for public comment on collection of information.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), on January 23, 2013 (78 FR 4986), the agency published a notice in the **Federal Register** soliciting public comment on the proposed Information Collection Request (ICR) abstracted below. In further compliance, the agency now publishes this additional notice announcing that the information collection request has been forwarded to the Office of Management and Budget (OMB) for review and comment.

DATES: Comments must be submitted on or before September 30, 2013.

ADDRESSES: Written comments to NHTSA may be submitted using any one of the following methods:

- *Mail:* Send comments to: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the U.S. Government regulations Web site at *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Whichever way you submit your comments, please remember to identify the docket number of this document within your correspondence. You may contact the docket by telephone at (202) 366–9324.

Docket: All documents in the dockets are listed in the *http://www.regulations.gov* index. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC. The Docket Management Facility is open between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Sauers, Program Manager, National Highway Traffic Safety Administration, Office of Regional Operations and Program Delivery. Telephone number: (202) 366–2121. Email address: *Barbara.Sauers@dot.gov*.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Uniform Procedures for State Highway Safety Grant Programs.

OMB Number: 2127–0687.

Type of Request: Approval of information collection request used for the administration of state highway safety grant programs.

Affected Public: 57 State governments and jurisdictions (fifty States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior).

Abstract: MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141), authorizes the National Highway Traffic Safety Administration to issue highway safety grants to States under Chapter 4 of Title 23, U.S.C. for fiscal years (FY) 2013–14. These Chapter 4 grant programs are identified as the Highway Safety

Program Grants under 23 U.S.C. 402 and the National Priority Safety Program Grants under 23 U.S.C. 405.

Under MAP–21, the statute directs States to submit a Highway Safety Plan (HSP) that serves as a single, consolidated application for the grants. The information collected as part of the required HSP includes information on the highway safety planning process, performance plan, highway safety strategies and projects, performance report, program cost summary, certifications and assurances, and an application for Section 405 grants. In general, a State is required to submit information to the agency that supports its qualifications for receiving grant funds.

Consistent with the statute, the agency published an interim final rule creating an application process for States to apply for these grant funds. An additional section of the interim final rule explained the agency's information collection request identifying the affected public and estimating the burden hours.

The estimated burden hours for the collection of information were based on all eligible respondents (i.e., applicants) for each of the grants:

- Section 402 grants: 57 (fifty States, the District of Columba, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior);
- Section 405(f) grants: 52 (fifty States, the District of Columbia, and Puerto Rico);
- Section 405(a)–(e), (g) grants: 56 (fifty States, the District of Columba, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

The agency estimated that it would take each respondent approximately 240 hours to collect, review and submit the reporting information to NHTSA for the Section 402 program and further estimated that it would take each respondent approximately 180 hours to collect, review and submit the reporting information to NHTSA for the Section 405 program. Based on the above information, the estimated annual burden hours for all respondents is 23,940 hours.

Assuming the average salary of these individuals is $50.00 per hour, the estimated cost for each respondent is $21,000; the estimated total cost for all respondents is $1,197,000. (This represents a reduced burden estimate from the interim final rule to reflect that this notice does not include burden estimates for the program cost summary information included with the HSP (i.e., HS–217 form). This information is collected under a previously approved information collection request (OMB Control Number 2127–0003.))

These estimates present the highest possible burden hours and amounts possible. All States do not apply for and receive a grant each year under each of these programs.

In response to the information collection request published in the interim final rule, the agency received one comment from the Montana Department of Transportation referencing paperwork reduction act criteria. The commenter concludes that the agency violated the paperwork reduction act by requiring that States submit certain information with their grant applications. However, in our view, this comment concerns substantive grant application requirements, rather than identifying specific issues with paperwork reduction act compliance. As a result, we will respond to this comment along with other similar comments on grant application requirements in the final rule.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document. Comments are due by September 30, 2013.

Mary D. Gunnels,

Associate Administrator, Regional Operations and Program Delivery.

[FR Doc. 2013–21037 Filed 8–28–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Fuji Heavy Industries U.S.A., Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full Fuji Heavy Industries U.S.A., Inc.'s (FUSA) petition for exemption of the Subaru [confidential] vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard*. FUSA requested confidential treatment for specific information in its petition. The agency has addressed FUSA's request for confidential treatment by letter dated June 28, 2013. However, FUSA has stated that it will provide the agency with the nameplate of the vehicle prior to its introduction for sale into commerce in order to allow the agency to notify law enforcement agencies and the public of a new vehicle line exempted from the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 2015 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, W43–302, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Proctor's phone number is (202) 366–4807. Her fax number is (202) 493–0073.

SUPPLEMENTARY INFORMATION: In a petition dated June 6, 2013, FUSA requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Subaru [confidential] vehicle line, beginning with the 2015 MY. The petition has been filed pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, FUSA provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Subaru [confidential] vehicle line. FUSA stated that it will install a passive, electronic-immobilizer antitheft device as standard equipment on its Subaru [confidential] vehicle line. The device will control

engine ignition, fuel delivery and starter motor operation.

FUSA stated that its device immobilization will facilitate and encourage activation by motorists because it requires nothing more than normal removal of the key from the ignition switch when the vehicle is not in use. The device will also include a visible and audible alarm with a panic mode feature. The alarm system will monitor the vehicle's door status and key identification. Any unauthorized effort to open a door or enter or move the vehicle will activate the alarm system causing the horn to sound and the hazard lamps to flash. FUSA's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In addressing the specific content requirements of 543.6, FUSA provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, FUSA conducted tests based on its own specified standards and provided a list of information of the tests it conducted. FUSA believes that its device is reliable and durable because the device complied with its own specific requirements for each test. Additionally, FUSA stated that because the immobilization features are designed and constructed within the vehicle's overall Controller Area Network Electrical Architecture, the antitheft device cannot be separated and controlled independently of this network. Furthermore, availability of a correct key will not defeat the electronic immobilization features of the key/vehicle antitheft device interface.

FUSA stated that it believes that historically, NHTSA has seen a decreasing theft rate trend when electronic immobilization has been added to alarm systems. FUSA stated that it presently has immobilizer devices on all of its product lines (Forester, Tribeca, Impreza, XV Crosstrek, Legacy, and Outback models) and it believes the data shows immobilization has had a demonstrable effect in lowering its theft rates. FUSA also noted that recent state-by-state theft results from the National Insurance Crime Bureau reported that in only 6 of the 50 states listed in its results, and the District of Columbia, not any Subaru vehicle appeared in its top 10 list of stolen vehicles. Review of the theft rates published by the agency for Subaru vehicles through the years (2007–2010) revealed that, while there is some variation, the theft rates for Subaru vehicles have on average, remained below the median theft rate of 3.5826.

FUSA also provided a comparative table showing how its device is similar to other manufacturers' devices that have already been granted an exemption by NHTSA. In its comparison, FUSA makes note of **Federal Register** notices published by NHTSA in which manufacturers have stated that they have seen reductions in theft due to the immobilization systems being used. Specifically, FUSA notes claims by Ford Motor Company that its 1997 Mustangs with immobilizers saw a 70% reduction in theft compared to its 1995 Mustangs without immobilizers. FUSA also noted its reliance on theft rates published by the agency which showed that theft rates were lower for Jeep Grand Cherokee immobilizer-equipped vehicles (model year 1999 through 2003) compared to older parts-marked Jeep Grand Cherokee vehicles (model year 1995 through 1998). FUSA stated that it believes its device is likely to be no less effective than those installed on lines for which the agency has already granted full exemption from the parts-marking requirements.

The agency agrees that the device is substantially similar to devices in other vehicles lines for which the agency has already granted exemptions. Based on the evidence submitted by FUSA, the agency believes that the antitheft device for the Subaru [confidential] vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that FUSA has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information FUSA provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full FUSA's petition for exemption for the Subaru vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If FUSA decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if FUSA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: August 16, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–21125 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Chrysler

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Chrysler LLC, (Chrysler) petition for exemption of the Chrysler [confidential] vehicle line in accordance with 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard*. Chrysler requested confidential treatment for specific information in its petition. The agency will address Chrysler's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with the [confidential] Model Year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–443, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated June 3, 2013, Chrysler requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for a confidential vehicle year and vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR Part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Chrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the [confidential] vehicle line. Chrysler will install the Sentry Key Immobilizer System (SKIS)/ "MiniCrypt" antitheft device as standard equipment on the vehicle line. The SKIS will provide passive vehicle protection by preventing the engine from operating unless a valid electronically encoded key is detected in the ignition system of the vehicle. The major components of the SKIS device consist of the Radio Frequency Hub Module (RFHM), Ignition Node Module (IGNM), Engine Control Module, Body Controller Module (BCM), the transponder key which performs the immobilizer function and an Instrument Panel Cluster which contains the telltale function only. According to Chrysler, all of these components work collectively to perform the immobilizer function. Chrysler stated that the SKIS does not provide an audible alert; however, the vehicle will be equipped with a security indicator in the instrument panel cluster that will flash if an invalid transponder key is detected. Chrysler's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

Chrysler stated that the SKIS will be placed on both its keyless entry vehicles and keyed vehicles. According to Chrysler, in its keyed vehicles, the SKIS immobilizer feature is activated when the key is removed from the ignition system (whether the doors are open or not). Specifically, the RFHM is paired with the IGNM that contains either a rotary ignition switch (keyed vehicles) or a START/STOP push button (keyless vehicles). Chrysler stated that the functions and features of the SKIS are all integral to the BCM in this vehicle. The RFHM contains a Radio Frequency (RF) transceiver and a microprocessor and it initiates the ignition process by communicating with the BCM through SKIS. The microprocessor-based SKIS hardware and software also use electronic messages to communicate with other electronic modules in the vehicle.

Chrysler stated that, in its keyed vehicles, the SKIS uses RF communication to obtain confirmation that the key is a valid transponder key to operate the vehicle. The RFHM receives Low Frequency (LF) and/or RF signals from the Sentry Key transponder which is integral to the fob with integrated key. For the keyed vehicles, the IGNM transmits an LF signal to excite the transponder in the key when the ignition switch is turned to the ON position. The IGNM waits for a signal response from the transponder and transmits the response to the RFHM. If the response identifies the transponder key as invalid or if no response is received from the transponder key, Chrysler stated that the RFHM will send an invalid key message to the Engine Control Module, which will disable engine operation and immobilize the vehicle after two seconds of running. Only a valid key inserted into the ignition system will allow the vehicle to start and continue to run.

Chrysler stated that, in its keyless vehicles, the RFHM is connected to a Keyless Ignition Node (KIN) with a START/STOP push button as an ignition switch. Chrysler stated that when the keyless START/STOP button is pressed, the RFHM transmits a signal to the transponder key through LF antennas to the RFHM. The RFHM then waits for a signal from the key fob transponder. If the response from the transponder identifies the transponder key as invalid or the transponder key is not within the car's interior, the engine will be disabled and the vehicle will be immobilized after two seconds of running.

To avoid any perceived delay when starting the vehicle with a valid transponder key and also to prevent unburned fuel from entering the exhaust, Chrysler stated that the engine is permitted to run for no more than two seconds if an invalid transponder key is used. Additionally, Chrysler stated that only six consecutive invalid vehicle start attempts will be permitted and that all other attempts will be locked out by preventing the fuel injectors from firing and disabling the starter.

In addressing the specific content requirements of 49 CFR Part 543.6, Chrysler provided information on the reliability and durability of the device. Chrysler conducted tests based on its own specified standards, i.e., voltage range and temperature range, and stated its belief that the device meets the stringent performance standards prescribed. Specifically, Chrysler stated that its device must demonstrate a minimum of 95 percent reliability with 90 percent confidence. In addition to the design and validation test criteria, Chrysler stated that 100% of its systems undergo a series of three functional tests prior to being shipped from the supplier to the vehicle assembly plant for installation in the vehicles.

Chrysler stated that its vehicles are also equipped with a security indicator that also acts as a diagnostic indicator. Specifically, Chrysler stated that if the RFHM detects an invalid transponder key or if a transponder key related fault occurs, the security indicator would flash. If the RFHM detects a system malfunction or the SKIS becomes ineffective, the security indicator would stay on. The SKIS also performs a self-test each time the ignition system is

turned to the RUN position and will store fault information in the form of a diagnostic trouble code in RFHM memory if a system malfunction is detected. Chrysler also stated that the vehicle is equipped with a Customer Learn transponder programming feature that when in use will cause the security indicator to flash.

Chrysler further stated that each ignition key used in the SKIS has an integral transponder chip included on the circuit board. Each transponder key has a unique transponder identification code that is permanently programmed into it by the manufacturer and must be programmed into the RFHM to be recognized by the SKIS as a valid key. Chrysler stated that once a Sentry Key has been programmed to a particular vehicle, it cannot be used on any other vehicle.

Chrysler stated that it expects the [confidential] vehicle line to mirror the lower theft rate results achieved by the Jeep Grand Cherokee vehicle line when ignition immobilizer systems were included as standard equipment on the line. Chrysler stated that it has offered the SKIS immobilizer system as standard equipment on all Jeep Grand Cherokee vehicles since the 1999 model year. Chrysler indicated that the average theft rate, based on NHTSA's theft data, for the Jeep Grand Cherokee vehicles for the four model years prior to 1999 (1995–1998), when a vehicle immobilizer system was not installed as standard equipment, was 5.3574 per one thousand vehicles produced, significantly higher than the 1990/1991 median theft rate of 3.5826. However, Chrysler also indicated that the average theft rate for the Jeep Grand Cherokee for the nine model years (1999–2009, no data available for 2007 and 2009) after installation of the standard immobilizer device was 2.5704, which is significantly lower than the median. The Jeep Grand Cherokee vehicle line was granted an exemption from the parts-marking requirements beginning with MY 2004 (67 FR 79687, December 30, 2002). Chrysler further asserts that NHTSA's theft data for the Jeep Grand Cherokee indicates that the inclusion of a standard immobilizer system resulted in a 52 percent net average reduction in vehicle thefts.

Pursuant to 49 U.S.C. 33106 and 49 CFR Part 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Chrysler has provided adequate reasons for its belief that the antitheft device for the vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Chrysler provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in 49 CFR Part 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Chrysler's petition for exemption for its [confidential] vehicle line from the parts-marking requirements of 49 CFR Part 541, beginning with its [confidential] model year vehicles. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard. Chrysler stated that an official nameplate for the vehicle has not yet been determined, but it will notify the agency as soon as that determination has been made.

If Chrysler decides not to use the exemption for this vehicle line, it must formally notify the agency. If such a decision is made, the vehicle line must be fully marked as required by 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Chrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. 49 CFR Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, 49 CFR Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that 49 CFR Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: August 21, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–21130 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 26, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Number: 1545–0057.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Recognition of Exemption Under Section 501(a).

Form: 1024.

Abstract: Organizations seeking exemption from Federal Income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

Affected Public: Private sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 291,542.

OMB Number: 1545–0735.

Type of Review: Extension without change of a currently approved collection.

Title: TD 7927—Final Amortization of Reforestation Expenditures.

Abstract: Title 26 U.S.C. 194(a) allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the Service to determine if the election is proper and allowable.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 6,001.

OMB Number: 1545–1210.

Type of Review: Extension without change of a currently approved collection.

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Form: 8038–T.

Abstract: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 57,900.

OMB Number: 1545–1300.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8641—Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

Abstract: Recipients of Federal financial assistance (FFA) must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Affected Public: Private sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 2,200.

OMB Number: 1545–1529.

Type of Review: Revision of a currently approved collection.

Title: Tip Reporting Alternative Commitment (TRAC) Agreement for Use in the Cosmetology and Barber Industry.

Form: Announcement 2000–21.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with section 6053(a); which requires employees to report all their tips monthly to their employers.

Affected Public: Private sector; Businesses or other for-profits.

Estimated Annual Burden Hours: 43,073.

OMB Number: 1545–1549.

Type of Review: Revision of a currently approved collection.

Title: Tip Reporting Alternative Commitment (TRAC) Agreement and Tip Rate Determination Agreement (TRDA) for Use in the Food and Beverage Industry.

Form: Announcement 2000–22 and 23.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with section 6053(a); which requires employees to report all their tips monthly to their employers.

Affected Public: Private sector; Businesses or other for-profits.

Estimated Annual Burden Hours: 296,916.

OMB Number: 1545–1714.

Type of Review: Revision of a currently approved collection.

Title: Tip Reporting Alternative Commitment (TRAC) Agreement for Use Where Tipped Employees Receive Both Cash and Charged Tips (Other Than in the Food and Beverage Industry and the Cosmetology and Barber Industry).

Form: Announcement 2000–19.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Affected Public: Private sector; Businesses or other for-profits.

Estimated Annual Burden Hours: 4,877.

OMB Number: 1545–1717.

Type of Review: Revision of a currently approved collection.

Title: Tip Rate Determination Agreement (TRDA) for Use by Any Employer With Tipped Employees (Other Than in the Food and Beverage Industry and the Gaming Industry).

Form: Announcement 2000–20.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Affected Public: Private sector; Businesses or other for-profits.

Estimated Annual Burden Hours: 1,897.

OMB Number: 1545–2034.

Type of Review: Extension without change of a currently approved collection.

Title: U.S. Partnership Declaration for an IRS e-file Return.

Form: 8453–PE.

Abstract: Form 8453–PE, U.S. Partnership Declaration for an IRS e-file Return, was developed for Modernized e-file for partnerships. Internal Revenue Code sections 6109 and 6103.

Affected Public: Private sector; Businesses or other for-profits.

Estimated Annual Burden Hours: 1,660.

OMB Number: 1545–2080.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2013–9.

Abstract: The respondents are nonprofit organizations seeking recognition of exemption under certain parts of Section 501(c) of the Internal Revenue Code. These organizations must submit a letter of application. We need this information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, the information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required under Section 6110.

Affected Public: Private sector; Not-for-profit institutions.

Estimated Annual Burden Hours: 200.

OMB Number: 1545–2164.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2010–6—Relief and Guidance on Corrections of Certain

Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a).

Abstract: Notice 2010–6 requires a corporation to attach to its federal income tax return an information statement related to the correction of a failure of a nonqualified deferred compensation plan to comply with the written plan document requirements of § 409A(a). The information statement must be attached to the corporation's income tax return for the corporation's taxable year in which the correction is made, and the subsequent taxable year to the extent an affected employee must include an amount in income in such subsequent year as a result of the correction. The corporation must also provide an information statement to each affected employee, and such employee must attach an information statement to the employee's federal tax return for the employee's taxable year during which the correction is made, and the subsequent taxable year but only if an amount is includible in income by the employee in such subsequent year as a result of the correction.

Affected Public: Private sector; Businesses or other for-profits.

Estimated Annual Burden Hours: 5,000.

OMB Number: 1545–2184.

Type of Review: Extension without change of a currently approved collection.

Title: REG–103038–05 (NPRM), REG–103039–05 (NPRM), and REG–103043–05 (NPRM). Section 6111 Regulations; (TD 9350—final).

Abstract: The regulations provide guidance for material advisors who are required to disclose reportable transactions under IRC 6111 as modified by the American Jobs Creation Act of 2004.

Affected Public: Private sector; Businesses or other for-profits.

Estimated Annual Burden Hours: 217.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–21074 Filed 8–28–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 26, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Bureau of the Fiscal Service

OMB Number: 1510–0019.

Type of Review: Extension of a currently approved collection.

Title: Claim Against the United States for the Proceeds of a Government Check.

Form: FMS 1133.

Abstract: This form is used to collect information needed to process an individual's claim for non-receipt of proceeds from a U.S. Treasury check. Once the information is analyzed, a determination is made and a recommendation is submitted to the program agency to either settle or deny the claim.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 11,278.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–21084 Filed 8–28–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 26, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave., NW.. Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0085.

Type of Review: Revision of a currently approved collection.

Title: Principal Place of Business on Beer Labels (TTB REC 5130/5).

Abstract: TTB regulations permit domestic brewers who operate more than one brewery to show as their address on labels and kegs of beer, their "principal place of business" address. This label option may be used in lieu of showing the actual place of production on the label or of listing all of the brewer's locations on the label.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

OMB Number: 1513–0124.

Type of Review: Extension without change of a currently approved collection.

Title: Surveys for Applications, Permits Online (PONL), Formulas Online (FONL), and COLAs (Generic).

Abstract: In an ongoing effort to improve customer service, TTB surveys its customers and keeps track of our progress. The surveys help TTB identify potential needs, problems, and opportunities for improvement in our applications processes; and also gather data on the industry member's experience with our electronic systems.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 53,000.

OMB Number: 1513–0125.

Type of Review: Revision of a currently approved collection.

Title: Distilled Spirits Bond.

Form: TTB 5110.56.

Abstract: TTB F 5110.56 is used by proprietors of Distilled Spirits Plants (DSPs) and Alcohol Fuel Plants (AFPs) to file bond coverage with TTB. Using this form, these proprietors may file coverage and/or withdraw coverage for

one plant or multiple plants. With this form proprietors of DSPs may also provide operations coverage for adjacent wine cellars. The bond may be secured through a surety company or it may be secured with collateral (cash, Treasury Bonds or Treasury Notes). The bond protects the revenue by ensuring adequate assets are available to pay tax liabilities.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,000.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–21089 Filed 8–28–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 26, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave., NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0045.

Type of Review: Extension without change of a currently approved collection.

Title: Imposition of Special Measure against Banco Delta Asia.

Abstract: Title 31 CFR 1010.655 imposes special measures against Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A. The regulations require covered financial institutions to establish, document, and maintain programs as an aid in protecting and securing the U.S. financial system.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 5,000.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–21082 Filed 8–28–13; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2007–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Substitute Mortality Tables for Single Employer Defined Benefit Plans.

DATES: Written comments should be received on or before October 28, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Gerald J. Shields at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Substitute Mortality Tables for Single Employer Defined Benefit Plans.

OMB Number: 1545–2073.

Revenue Procedure Number: Revenue Procedure 2007–37.

Abstract: Revenue Procedure 2008–62 describes the process for obtaining a letter ruling as to the acceptability of substitute mortality tables under section 430(h)(3)(C) of the Code. Past revenue procedures were superseded.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and farms.

Estimated Number of Responses: 450.

Estimated Annual Average Time per Response: 56 hrs., 25 min.

Estimated Total Annual Hours: 25,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 23, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–21129 Filed 8–28–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Definitions Under Subchapter S of the Internal Revenue Code.

DATES: Written comments should be received on or before October 28, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or at *Gerald.J.Shields@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Definitions Under Subchapter S of the Internal Revenue Code.

OMB Number: 1545–1462.

Regulation Project Number: TD 8696.

Abstract: Section 1.1377–1(b)(4) of the regulation provides that an S corporation making a terminating election under Internal Revenue Code section 1377(a)(2) must attach a statement to its timely filed original or amended return required to be filed under Code section 6037(a). The statement must provide information concerning the events that gave rise to the election and declarations of consent from the S corporation shareholders.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 4,000.

Estimated Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 23, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–21135 Filed 8–28–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Various Revenue Procedures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Modified Endowment Contract Correction Program Extension.

DATES: Written comments should be received on or before October 28, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at *Gerald.J.Shields*.

SUPPLEMENTARY INFORMATION:

Title: Modified Endowment Contract Correction Program Extension.

OMB Number: 1545–1752.

Revenue Procedure Number: Various Revenue Procedures.

Abstract: Revenue Procedure 2001–42 allows issuers of life insurance contracts whose contracts have failed to meet the tests provided in section 7702A of the Internal Revenue Code to cure these contracts that have inadvertently become modified endowment contracts. The revenue procedure has been updated by various other revenue procedures, such as RP 2008–40, RP 2008–38, RP 2008–39, RP 2008–41, and RP 2088–42, which has been published since then.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 70.

Estimated Average Time per Respondent: 85 hours.

Estimated Total Annual Reporting Hours: 5,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 23, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–21133 Filed 8–28–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0144]

Agency Information Collection (HUD/VA Addendum to Uniform Residential Loan Application) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501- 3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 30, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB Control No. 2900–0144" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov*. Please refer to "OMB Control No. 2900–0144."

SUPPLEMENTARY INFORMATION:

Title: HUD/VA Addendum to Uniform Residential Loan Application, VA Form 26–1802a.

OMB Control Number: 2900–0144.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1802a serves as a joint loan application for both VA and the Department of Housing and Urban Development (HUD). Lenders and Veterans use the form to apply for home loans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 20, 2013, at pages 29436–29437.

Affected Public: Individuals or households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 200,000.

Dated: August 26, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–21085 Filed 8–28–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0766]

Proposed Information Collection (Care Coordination Home Telehealth (CCHT) Patient Satisfaction Survey, VA Form 10–0481); Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extended collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection required to obtain patient perspective on satisfaction with the CCHT program and messaging devices.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 28, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–0766" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or fax (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Care Coordination Home Telehealth (CCHT) Patient Satisfaction Survey, VA Form 10–0481.

OMB Control Number: 2900–0766.

Type of Review: Extension of a currently approved collection.

Abstract: Patients enrolled in the CCHT program will receive survey questions through a messaging device located in their home. Patients can select an answer by the use of buttons, a touch screen application or electronically spoken to them through an Interactive Voice Response if they are visually impaired.

Affected Public: Individuals or households.

Estimated Annual Burden: 1640 burden hours.

Estimated Average Burden per Respondent: 1.5 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 65,600.

Dated: August 26, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–21069 Filed 8–28–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (Beneficiary Travel Mileage Reimbursement Application Form) Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 30, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–NEW (Beneficiary Travel Mileage Reimbursement Application Form)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7492 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900–NEW (Beneficiary Travel Mileage Reimbursement Application Form)."

SUPPLEMENTARY INFORMATION:

Title: Beneficiary Travel Mileage Reimbursement Application Form, VA Form 10–3542.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The purpose of the information collection is for beneficiaries to apply for the beneficiary travel mileage reimbursement benefit in an efficient, convenient and accurate manner. VHA must determine the identity of the claimant, the dates and length of the trip being claimed based on addresses of starting and ending points, and whether expenses other than mileage are being claimed. The form is used only when the claimant chooses not to apply verbally and is provided for their convenience. This collection of information is necessary to enable the VHA to provide this benefit and appropriately ensure that funds are being paid to the correct claimant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 14, 2013, at page 36035.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 580,000.

Estimated Average Burden per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 11,600,000.

Dated: August 26, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–21086 Filed 8–28–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Agency Information Collection (Request for Details of Expenses) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 30, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0138" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to "OMB Control No. 2900–0138."

SUPPLEMENTARY INFORMATION:

Title: Request for Details of Expenses, VA Form 21–8049.

OMB Control Number: 2900–0138.

Type of Review: Extension of a currently approved collection.

Abstract: VA will use the data collected on VA Form 21–8049 to determine the amounts of any deductible expenses paid by the claimant and/or commercial life insurance received in order to calculate the current rate of pension. Pension is an income-based program, and the payable rate depends on the claimant's annual income.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register**

Notice with a 60-day comment period soliciting comments on this collection of information was published on May 20, 2013, at page 29439.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 22,800.

Dated: August 26, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–21073 Filed 8–28–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0783]

Proposed Information Collection (Nonprofit Research and Education Corporations (NPCs) Data Collection); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate the information collected in the NPC Annual Report Template from the NPCs that is not used in preparing the NPC Annual Report to Congress. Information is used by VA in the conduct of its oversight of the NPCs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 28, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0783 (Nonprofit Research and Education Corporations (NPCs) Data Collection)" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or fax (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Nonprofit Research and Education Corporations (NPCs) Data Collection

a. Annual Report Template, VA Form 10–0510

b. NPPO Internal Control Questionnaire, VA Form 10–0510B

c. NPPO Operations Oversight Questionnaire, VA Form 10–0510C

OMB Control Number: 2900–0783

Type of Review: Revision of a currently approved collection.

Abstract: The combined NPC Annual Report to Congress is described in Section 7366 (d) "The Secretary (DVA) shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the corporations (NPCs) established under this subchapter." Section 7366(d) goes on to list some of the specific information required by Congress. The sources for all of the information contained in the NPC Annual Report to Congress are the individual NPC Annual Report Templates submitted by each of the NPCs.

Affected Public: Individuals or households.

Estimated Annual Burden: 774 burden hours.

a. NCP Annual Report Template—301 hrs

b. NPPO Internal Control Questionnaire—344 hrs

c. NPPO Operations Oversight Questionnaire—129 hrs

Estimated Average Burden per Respondent:

a. NCP Annual Report Template—210 minutes

b. NPPO Internal Control Questionnaire—240 minutes

c. NPPO Operations Oversight Questionnaire—90 minutes

Frequency of Response: One-time.

Estimated Number of Respondents: 258

a. NCP Annual Report Template—86

b. NPPO Internal Control Questionnaire—86

c. NPPO Operations Oversight Questionnaire—86

Dated: August 23, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–21064 Filed 8–28–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Thursday,
No. 168 August 29, 2013

Part II

Securities and Exchange Commission

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Listing Standards for Certain Securities; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70250; File No. SR–BATS–2013–038]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Listing Standards for Certain Securities

August 23, 2013.

I. Introduction

On June 21, 2013, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules for the qualification, listing and delisting of securities on the Exchange. On July 2, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 10, 2013.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt rules applicable to the qualification, listing, trading, and delisting on BATS ("Listing Rules") of certain securities. Specifically, BATS proposes to amend Rule 14.11(d) ("Securities Linked to the Performance of Indexes and Commodities (Including Currencies)") to: (i) Incorporate generic continued listing standards for Equity Index-Linked Securities and Commodity-Linked Securities (collectively, "Existing Linked Securities") under Rule 14.11(d);[5] (ii) adopt initial and continued generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities (collectively, "Additional Linked Securities," and together with the Existing Linked Securities, "Linked Securities");[6] (iii) revise the introductory paragraph to incorporate references to, and provide descriptions of, the Additional Linked Securities;[7] (iv) revise the paragraph of Rule 14.11(d)(2)(H) relating to trading halts to clarify that it applies to all Linked Securities;[8] (v) adopt Interpretations and Policies .01 relating to obligations of market makers in Linked Securities;[9] (vi) revise the continued listing standards of Rule 14.11(h), ("Listing Requirements for Securities Not Specified Above (Other Securities)") to require the aggregate market value or principal amount of publicly-held units must be at least $1 million; (vii) amend Rule 14.11(d)(2)(D) so that the Exchange may list Linked Securities that provide for three times accelerated payment at maturity instead of twice the accelerated payment at maturity; and (viii) correct cross references and conform defined terms. In addition, BATS proposes new Rule 14.11(e),[10] ("Trading of Certain Derivative Securities") to adopt initial and continued listing criteria for the following securities; Index-Linked Exchangeable Notes; Equity Gold Shares; Trust Certificates; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Trust Units; Managed Trust Securities; and Currency Warrants (together with the Linked Securities, collectively, the "Subject Securities").[11] The proposed Listing Rules are based on, and are substantially similar to, the listing standards of Nasdaq Stock Market LLC ("Nasdaq") for the listing and trading of the Subject Securities.

A. Proposed Changes to Rule 14.11(d) ("Securities Linked to the Performance of Indexes and Commodities (Including Currencies)")

BATS proposes to amend the introductory paragraph of Rule 14.11(d) to state that the Exchange will consider for listing and trading of Equity Index-Linked Securities and Commodity-Linked Securities, fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures Linked Securities") and multifactor index-linked securities ("Multifactor Index-Linked Securities" and, together with Equity Index-Linked Securities and Commodity-Linked Securities, Fixed Income Index-Linked Securities and Futures-Linked Securities, "Linked Securities") to the rule. In addition, the Exchange proposes to amend the introductory paragraph to provide a definition for "Reference Assets," which refers to the basis for the payment at maturity of the Linked Securities that in each case meet the applicable criteria of Rule 14.11(d). BATS further proposes to amend the introductory paragraph to describe the basis for payment at maturity of each of the Linked Securities as follows:

- The payment at maturity of a cash amount with respect to Equity Index-Linked Securities is based on the performance of an underlying equity index or indexes (an "Equity Reference Asset").
- The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (a "Commodity Reference Asset"). The terms "Commodity" and "Commodity-Related Security" are defined in Rule 14.11.
- The payment at maturity with respect to Fixed Income Index-Linked Securities is based on the performance of one or more indexes or portfolios of notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (a "Fixed Income Reference Asset").
- The payment at maturity with respect to Futures-Linked Securities is based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 amends and replaces in its entirety the proposal as originally submitted on September 25, 2012. Amendment No. 1 corrects certain inconsistencies between the proposed rules and the descriptions of such proposed rules as well as various typographical and grammatical errors contained in the original filing.

[4] *See* Securities Exchange Act Release No. 69931 (July 3, 2013), 78 FR 41462 ("Notice").

[5] Exchange Rules 14.11(d)(2)(G) and (H) currently include initial listing standards applicable to Equity Index-Linked Securities and Commodity-Linked Securities. The Exchange proposes to re-number the existing rule text in Rules 14.11(d)(2)(G) and (H), and to adopt continuing listing standards applicable to Equity Index-Linked Securities and Commodity-Linked Securities, in proposed Rules 14.11(d)(2)(K)(i) and (ii).

[6] *See* proposed Rules 14.11(d)(2)(k)(iii), (iv) and (v).

[7] *See* introductory paragraphs to Rule 14.11(d), as proposed to be amended.

[8] *See* proposed Rule 14.11(d)(2)(H) (formerly Rule 14.11(d)(2)(J)).

[9] *See* proposed Interpretation and Policies .01 to Rule 14.11(d).

[10] Existing Rule 14.11(e), Selected Equity-linked Debt Securities ("SEEDS"), would be renumbered as Rule 14.11(e)(12).

[11] The Exchange has proposed to adopt generic listing standards for Linked Securities and Index-Linked Exchangeable Notes, both generic and non-generic listing standards for Currency Trust Shares, and non-generic listing standards for all other Subject Securities.

of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; (b) interest rate futures or options or derivatives or (c) CBOE Volatility Index (VIX) Futures (a "Futures Reference Asset").

• The payment at maturity with respect to Multifactor Index-Linked Securities is based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (a "Multifactor Reference Asset," and together with Equity Reference Assets, Commodity Reference Assets, Fixed Income Reference Assets and Futures Reference Assets, "Reference Assets"). A Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates.

Based on the Exchange's proposed amendments to the introductory paragraphs of Rule 14.11(d), the definition of "Linked Securities" in Rule 14.11(d) now encompasses the Additional Linked Securities. Therefore, under the Exchange's proposal, all provisions of Rule 14.11(d) that apply to Linked Securities now apply to the Additional Linked Securities.

As stated in Rule 14.11(d)(2), BATS may consider for listing and trading pursuant to Rule 19b–4(e) under the Act Linked Securities (including the Additional Linked Securities) that meet the standards set forth in Rule 14.11(d)(2), and BATS may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities (including the Additional Linked Securities) that do not otherwise meet the standards set forth in Rule 14.11(d)(2).

The Exchange is not proposing any amendments to Rules 14.11(d)(2)(A)–(C) or (E)–(F) and such provisions would apply to all Linked Securities (including the Additional Linked Securities).[12]

BATS Rule 14.11(d)(2)(D) states that pursuant to Rule 19b–4(e) under the Act [13] a loss or negative payment at maturity of a Linked Security may be accelerated by a multiple of twice the performance of an underlying asset. The Exchange proposes to amend Rule 14.11(d)(2)(D) to permit the Exchange to list Linked Securities that provide for three times accelerated payment at maturity instead of twice the accelerated payment at maturity. BATS Rule 14.11(d)(2)(D) is based on, and is substantively identical to, Nasdaq Rule 5710(d).[14] Rule 14.11(d)(2)(D), as amended, would apply to all Linked Securities (including Additional Linked Securities).

Additionally, the Exchange proposes to re-number the current text of Rule 14.11(d) by deleting current Rules 14.11(d)(2)(G) and (H) and moving the text of these two sections into proposed Rules 14.11(d)(2)(K)(i) and (ii).[15] Further, the Exchange proposes to re-number the remaining existing sections of Rule 14.11(d), and to amend references and defined terms in such sections such that they would apply to all Linked Securities.

1. Equity Index-Linked Securities

BATS is renumbering current Rule 14.11(d)(2)(G), which sets forth the initial listing criteria for Equity Index-Linked Securities, as proposed Rule 14.11(d)(2)(K)(i)(a). BATS is not proposing any substantive changes to its initial listing criteria for Equity Index-Linked Securities.

Proposed Rule 14.11(d)(2)(K)(i)(b) establishes continued listing criteria for Equity Index-Linked Securities, which are based on Nasdaq Rule 5710(k)(i). The proposed rule provides that the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security), if any of the initial listing standards are not continuously maintained, except that:

• The criteria that no single component represent more than 25% of the dollar weight of the index and the five highest dollar weighted components in the index cannot represent more than 50% (or 60% for indexes with less than 25 components) of the dollar weight of the index, need only be satisfied at the time the index is rebalanced; and

• Component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 500,000 shares, or minimum global notional volume traded per month of $12,500,000, averaged over the last six months.[16]

In connection with an Equity Index-Linked Security that is listed pursuant to Rule 14.11(d)(2)(K)(i)(a), the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security) if the underlying index fails or indexes fail to satisfy the maintenance standards or conditions as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

Additionally, the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security), under any of the following circumstances:

• If the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than $400,000;

• If the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available

[12] Current Rule14.11(d)(2)(A)–(C) states:

(A) Both the issue and the issuer of such security meet the criteria for other securities set forth in Rule 14.11(h), except that if the security is traded in $1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required.

(B) The issue has a term of not less than one (1) year and not greater than thirty (30) years.

(C) The issue must be the non-convertible debt of the Company.

Current Rule 14.11(d)(2)(E) and (F) state:

(E) The Company will be expected to have a minimum tangible net worth in excess of $250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the Company will be expected: (i) To have a minimum tangible net worth of $150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the Company's other index-linked note offerings (combined with index-linked note offerings of the Company's affiliates) listed on a national securities exchange exceeds 25% of the Company's net worth.

(F) The Company is in compliance with Rule 10A–3 under the Act.

[13] 17 CFR 240.19b–4(e).

[14] The proposal is also consistent with NYSE Arca Equities Rule 5.2(j)(6)(A)(d) and Section 703.22(B)(6) of the New York Stock Exchange Listed Company Manual.

[15] *See supra* note 5.

[16] *See* proposed Rule 14.11(d)(2)(K)(i)(b)(1).

throughout Regular Trading Hours [17] and both the Pre-Opening [18] and After Hours Trading Sessions; [19] or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Finally, the proposed rule provides that Equity-Linked Indexes will be rebalanced at least annually.

2. Commodity-Linked Securities

BATS proposes to renumber the initial listing standards for Commodity-Linked Securities—currently are set forth in Rule 14.11(d)(2)(H)—to Proposed Rule 14.11(d)(2)(K)(ii)(a). BATS is not proposing any substantive changes to its initial listing criteria for Commodity-Linked Securities.

Proposed Rule 14.11(d)(2)(K)(ii)(b) establishes continued listing criteria for Commodity-Linked Securities. The Exchange will commence delisting or removal proceedings if any of the initial listing criteria are not continuously maintained. Additionally, under the proposed rule, the Exchange will commence delisting or removal proceedings under any of the following circumstances:

• If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than $400,000;

• If the value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of the proposed rule; or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The proposed rule change relating to Commodity-Linked Securities is based on Nasdaq Rule 5710(k)(ii).

3. Fixed Income-Linked Securities

Proposed Rule 14.11(d)(2)(K)(iii) sets forth the listing criteria for Fixed Income Index-Linked Securities. The proposed initial and continuing listing standards for Fixed-Income Linked Securities are based on Nasdaq Rule 5710(k)(iii).

Proposed Rule 14.11(d)(2)(k)(iii)(a) states that either: (1) The Fixed Income Reference Asset to which the security is linked shall have been reviewed and approved for the trading of options, Index Fund Shares, or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (2) the issue must meet the following initial listing criteria:

• Components of the Fixed Income Refefence Asset that in the aggregate account for at least 75% of the weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of $100 million or more;

• A component of the Fixed Income Reference Asset may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;

• No component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) will represent more than 30% of the dollar weight of the Fixed Income Reference Asset, and the five highest dollar weighted components in the Fixed Income Reference Asset will not in the aggregate account for more than 65% of the dollar weight of the Fixed Income Reference Asset;

• An underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and

• Component securities that in the aggregate account for at least 90% of the dollar weight of the Fixed Income Reference Asset must be from one of the following: (i) Issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; or (ii) issuers that have a worldwide market value of outstanding common equity held by non-affiliates of $700 million or more; or (iii) issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; or (iv) exempted securities as defined in Section 3(a)(12) of the Act, or (v) issuers that are a government of a foreign country or a political subdivision of a foreign country.

In addition, proposed Rule 14.11(d)(2)(k)(iii)(b) states the value of the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day.

Proposed Rule 14.11(d)(2)(K)(iii)(c) provides that the Exchange will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained, and that the Exchange will also commence delisting or removal proceedings if:

• If the aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than $400,000;

• If the value of the Fixed Income Reference Asset is no longer calculated or available and a new Fixed Income Reference Asset is substituted, unless the new Fixed Income Reference Asset meets the requirements of proposed Rule 14.11(d)(2)(K); or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

4. Futures-Linked Securities

Proposed Rule 14.11(d)(2)(K)(iv) establishes listing standards for Futures-Linked Securities. This proposed rule is based on Nasdaq Rule 5710(k)(iv).

Proposed Rule 14.11(d)(2)(K)(iv)(a) states that the issue must meet either of the following the initial listing standards:

• The Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied, or

• The pricing information for components of a Futures Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the requirements of proposed Rule 14.11(d)(2)(K)(iv)(a)(2); provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, proposed Rule 14.11(d)(2)(k)(iv)(b) states that the issue must meet both of the following initial listing criteria:

• The value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the regular market session, and

[17] Regular Trading Hours are defined in Exchange Rule 1.5(w) as the time between 9:30 a.m. to 4:00 p.m. E.T.

[18] The Pre-Opening Session is defined in Exchange Rule 1.5(r) and currently means the time between 8:00 a.m. to 9:30 a.m. E.T.

[19] The After Hours Trading Session is defined in Exchange Rule 1.5(c) and currently means the time between 4:00 p.m. to 5:00 p.m. E.T.

• In the case of Futures-Linked Securities that are periodically redeemable, the value of a share of each series of a particular security (the "Intraday Indicative Value") of the subject Futures-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session.

Proposed Rule 14.11(d)(2)(K)(iv)(c) states that the Exchange will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained, and that the Exchange will also commence delisting or removal proceedings under any of the following circumstances:

• If the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than $400,000;

• If the value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of proposed Rule 14.11(d)(2)(K); or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

5. Multifactor Index-Linked Securities

Proposed Rule 14.11(d)(2)(K)(v) governs the listing standards for Multifactor Index-Linked Securities. The proposed rule is based on Nasdaq Rule 5710(k)(v).

Proposed Rule 14.11(D)(2)(K)(v)(a) states that the issue must meet one of the following initial listing standards:

• Each component of the Multifactor Reference Asset to which the security is linked shall have been reviewed and approved for the trading of either options, Index Fund Shares, or other derivatives under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or

• Each Reference Asset included in the Multifactor Reference Asset must meet the applicable initial and continued listing criteria set forth in the relevant subsection of proposed Rule 14.11(d)(2)(K).

In addition, proposed Rule 14.11(d)(2)(K)(v)(b) states that the issue must meet both of the following initial listing criteria:

• The value of the Multifactor Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Multifactor Index-Linked Security trades on the Exchange; and

• In the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value of the Multifactor Index-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Multifactor Index-Linked Securities trade on the Exchange.

Proposed Rule 14.11(d)(2)(K)(v)(c) states that the Exchange will commence delisting or removal proceedings:

• If any of the initial listing criteria described above are not continuously maintained;

• If the aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than $400,000;

• If the value of the Multifactor Reference Asset is no longer calculated or available and a new Multifactor Reference Asset is substituted, unless the new Multifactor Reference Asset meets the requirements of proposed Rule 14.11(d)(2)(K); or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Interpretation and Policy .01 to proposed Rule 14.11(d)(2)(K) establishes certain regulatory requirements for registered market makers in Linked Securities. These regulatory requirements for registered market makers in Linked Securities are based on Nasdaq Rule 5710, Commentary .01. Under the proposed rule, the registered market maker in Linked Securities:

• Must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, currency or futures underlying a Reference Asset component, which the registered market maker may have or over which it may exercise investment discretion.

• Shall not trade in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, or futures currency underlying a Reference Asset component, in an account in which a registered market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by the proposed Rule.

In addition to the existing obligations under Exchange rules regarding the production of books and records,[20] the registered market maker in Linked Securities will be required to make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or nonregistered employee affiliated with such entity for its or their own accounts in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, currency or futures underlying a Reference Asset component, as may be requested by the Exchange.

B. Proposed Changes to Rule 14.11(e) ("Trading of Certain Derivative Securities")

The Exchange proposes to adopt new Rule 14.11(e), Trading of Certain Derivative Securities, which sets forth listing standards for the following securities: Index-Linked Exchangeable Notes; Equity Gold Shares; Trust Certificates; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Trust Units; Managed Trust Securities; and Currency Warrants.

1. Index-Linked Exchangeable Notes

Proposed Rule 14.11(e)(1) adopts listing standards for Index-Linked Exchangeable Notes. Index-Linked Exchangeable Notes are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount (the "Cash Value Amount") based on the reported market prices of the underlying stocks of an underlying index. Although the notes are linked to an index, they will trade as a single security.

Index-Linked Exchangeable Notes will be considered for listing and trading by the Exchange pursuant to

[20] *See, e.g.*, Rule 4.2.

Rule 19b–4(e) under the Act,[21] provided:

• Both the issue and the issuer of such security meet the requirements of Rule 14.11(h), Listing Requirements for Securities Not Specified Above (Other Securities), except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations or redeemable at the option of the holders thereof on at least a weekly basis, then no minimum public distribution and no minimum number of holders.

• The issue has a minimum term of one year.

• The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Rule 14.8(b)(2). In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 14.8(b)(2); and (ii) not to have issued Index-Linked Exchangeable Notes where the original issue price of all the issuer's other Index-Linked Exchangeable Note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.

• The index to which an exchangeable-note is linked shall either be: (i) Indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivatives securities (each, a "Third-Party Index") either by the Commission under Section 19(b)(2) of the Act and rules thereunder or by the Exchange under rules adopted pursuant to Rule 19b–4(e); or (ii) indices which the issuer has created and for which the Exchange will have obtained approval from either the Commission pursuant to Section 19(b)(2) and rules thereunder or from the Exchange under rules adopted pursuant to Rule 19b–4(e) (each an "Issuer Index"). The Issuer Indices and their underlying securities must meet one of the following: (A) The procedures and criteria set forth in BATS Options Rules 29.6(b) and (c), or (B) the criteria set forth in Rules 14.11(e)(12)(B)(iii) and (iv), the index concentration limits set forth in BATS Options Rule 29.6, and BATS Options Rule 29.6(b)(12) insofar as it relates to BATS Options Rule 29.6(b)(6).

BATS will treat Index-Linked Exchangeable Notes as equity instruments.

[21] 17 CFR 240.19b–4(e).

Proposed Rule 14.11(e)(1)(F) requires that the Intraday Indicative Value of the Index-Linked Exchangeable Notes be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session. Additionally, under proposed Rule 14.11(e)(1)(G), the value of the underlying index must be publicly available to investors, on a real time basis, every 15 seconds. Proposed Rule 14.11(e)(1)(F) also includes a definition of "Intraday Indicative Value" that is specific to the proposed rule: the term "Intraday Indicative Value" means an estimate of the value of a note or a share of the series of Index-Linked Exchangeable Notes. Proposed Rules 14.11(e)(1)(F) and (G) require that the value of an Index-Linked Exchangeable Note and its underlying index are publicly available on a real time basis.

Beginning 12 months after the initial issuance of a series of Index-Linked Exchangeable Notes, the Exchange will consider the suspension of trading in or removal from listing of that series of Index-Linked Exchangeable Notes under any of the following circumstances:

• If the series has fewer than 50,000 notes issued and outstanding;

• If the market value of all Index-Linked Exchangeable Notes of that series issued and outstanding is less than $1,000,000; or

• If such other event shall occur or such other condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The proposed rule relating to Index-Linked Exchangeable Notes is based on, and substantively identical to, Nasdaq Rule 5711(a).

2. Equity Gold Shares

Proposed Rule 14.11(e)(2) applies to Equity Gold Shares, which represent units of fractional undivided beneficial interest in, and ownership of, the Equity Gold Trust. The proposed rule change relating to Equity Gold Shares is based on, and substantively identical, Nasdaq Rule 5711(b). While Equity Gold Shares are not technically "Index Fund Shares," and thus are not covered by Exchange Rule 14.11(c), all other of the Exchange's rules that reference "Index Fund Shares" also apply to Equity Gold Shares.

Except to the extent that specific provisions in proposed Rule 14.11(e)(2) govern, or unless the context otherwise requires, the provisions of all other Exchange Rules and policies apply to the trading of Equity Gold Shares on the Exchange. The provisions set forth in proposed Rule 14.11(e)(4) relating to Commodity-Based Trust Shares also apply to Equity Gold Shares.

3. Trust Certificates

Proposed Rule 14.11(e)(3) establishes the listing standards applicable to Trust Certificates. The proposed rule is based on, and substantively identical to, Nasdaq Rule 5711(c).

The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Certificates. Trust Certificates represent an interest in a special purpose trust (the "Trust") created pursuant to a trust agreement, and may or may not provide for the repayment of the original principal investment amount. Trust Certificates pay an amount at maturity which is based upon the performance of specified assets as set forth below:

• An underlying index or indexes of equity securities (an "Trust Certificate Equity Reference Asset");

• Instruments that are direct obligations of the issuing company, either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index ("Index Warrants"); or

• A combination of two or more Equity Reference Assets or Index Warrants.

The Exchange will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Trust Certificates.

Proposed Interpretation and Policy .01 to proposed Rule 14.11(e)(3) states that the Exchange will commence delisting or removal proceedings with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue), under any of the following circumstances:

• If the aggregate market value or the principal amount of the securities publicly held is less than $400,000;

• If the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for

example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout Regular Trading Hours and both the Pre-Opening and After Hours Trading Sessions; or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Proposed Interpretation and Policy .02 to Rule 14.11(e)(3) provides that the term of the Trust shall be stated in the Trust prospectus.

Proposed Interpretation and Policy .03 to Rule 14.11(e)(3) provides that the trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. The trustee of a listed issue may not be changed without prior notice to and approval of the Exchange.

Proposed Interpretation and Policy .04 to Rule 14.11(e)(3) provides that voting rights will be set forth in the Trust prospectus.

Proposed Interpretation and Policy .05 to Rule 14.11(e)(3) provides that the Exchange will implement written surveillance procedures for Trust Certificates.

Proposed Interpretation and Policy .06 to Rule 14.11(e)(3) provides that the Trust Certificates will be subject to the Exchange's equity trading rules.

Proposed Interpretation and Policy .07 to Rule 14.11(e)(3) provides that, prior to the commencement of trading of a particular Trust Certificates listing pursuant to this Rule, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to members providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in Trust Certificates.

Proposed Interpretation and Policy .08 to Rule 14.11(e)(3) provides that Trust Certificates may be exchangeable at the option of the holder into securities that participate in the return of the applicable underlying asset. In the event that the Trust Certificates are exchangeable at the option of the holder and contain an Index Warrant, then a member must ensure that the member's account is approved for options trading in accordance with the rules of the Exchange's options market ("BATS Options") to exercise such rights.

Proposed Interpretation and Policy .09 to Rule 14.11(e)(3) provides that Trust Certificates may pass-through periodic payments of interest and principle of the underlying securities.

Proposed Interpretation and Policy .10 to Rule 14.11(e)(3) provides that the Trust payments may be guaranteed pursuant to a financial guaranty insurance policy which may include swap agreements.

Proposed Interpretation and Policy .11 to Rule 14.11(e)(3) provides that the Trust Certificates may be subject to early termination or call features.

4. Commodity-Based Trust Shares

Proposed Rule 14.11(e)(4) permits the listing and trading, or trading pursuant to unlisted trading privileges, of Commodity-Based Trust Shares on the Exchange. The proposed rule change relating to Trust Certificates is based on, and substantively identical to, Nasdaq Rule 5711(c).

Proposed Rule 14.11(e)(4) applies only to Commodity-Based Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

"Commodity-Based Trust Shares," as defined in proposed Rule 14.11(e)(4)(C)(i), means a security that: (a) Is issued by a Trust that holds a specified commodity deposited with the Trust; (b) is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity. Proposed Rule 14.11(e)(4)(C)(ii) states that the term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act ("CEA").

Proposed Rule 14.11(e)(4)(D) states that the Exchange may trade, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares based on an underlying commodity. Each issue of a Commodity-Based Trust Share will be designated as a separate series and will be identified by a unique symbol.

Proposed Rule 14.11(e)(4)(E)(i) states that the Exchange will establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

Proposed Rule 14.11(e)(4)(E)(ii) provides that following the initial 12-month period following commencement of trading on the Exchange of Commodity-Based Trust Shares, the Exchange will consider the suspension of trading in or removal from listing of such series under any of the following circumstances: if

• The Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity-Based Trust Shares for 30 or more consecutive trading days;

• The Trust has fewer than 50,000 receipts issued and outstanding;

• The market value of all receipts issued and outstanding is less than $1,000,000;

• The value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value;

• The Intraday Indicative Value [22] is no longer made available on at least a 15-second delayed basis; or

• Such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Commodity-Based Trust Shares issued in connection with such entity Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

Proposed Rule 14.11(e)(4)(E)(iii) provides that the stated term of the Trust shall be stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 14.11(e)(4)(E)(iv) sets forth the following requirements for the trustee of a Trust:

• The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for

[22] The Intraday Indicative Value is an estimate, updated at least every 15 seconds, of the value of a share of each series during the Exchange's regular market session. *See, e.g.*, Exchange Rules 14.11(b)(3)(C) and (c)(3)(C).

handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

• No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 14.11(e)(4)(E)(v) states that voting rights shall be as set forth in the Trust prospectus.

Proposed Rules 14.11(e)(4)(F) and (G) describe the limitation of the Exchange liability and requirements for market makers in Commodity-Based Trust Shares (see below for a general discussion of these requirements).

Interpretation and Policy .01 to proposed Exchange Rule 14.11(e)(4) provides that a Commodity-Based Trust Share is a Trust Issued Receipt that holds a specified commodity deposited with the Trust.

Interpretation and Policy .02 to proposed Exchange Rule 14.11(e)(4) provides that the Exchange requires that members provide all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-Based Trust Shares.

Interpretation and Policy .03 to proposed Exchange Rule 14.11(e)(4) provides that transactions in Commodity-Based Trust Shares will occur during Regular Trading Hours and both the Pre-Opening and After Hours Trading Sessions.

Interpretation and Policy .04 to proposed Exchange Rule 14.11(e)(4) provides that the Exchange will file separate proposals under Section 19(b) of the Exchange Act before the listing and/or trading of Commodity-Based Trust Shares.

5. Currency Trust Shares

The Exchange proposes to adopt new Exchange Rule 14.11(e)(5) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Currency Trust Shares. The proposed rule change relating to Currency Trust Shares is based on Nasdaq Rule 5711(e).

Proposed Rule 14.11(e)(5) would apply only to Currency Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Currency Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(e)(5)(C) provides that the term "Currency Trust Shares" as used in these proposed rules means, unless the context otherwise requires, a security that:

• Is issued by a Trust that holds a specified non-U.S. currency or currencies deposited with the Trust;

• When aggregated in some specified minimum number may be surrendered to the Trust by an Authorized Participant (as defined in the Trust's prospectus) to receive the specified non-U.S. currency or currencies; and

• Pays beneficial owners interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the Trust.

Proposed Rule 14.11(e)(5)(D) states that the Exchange may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency or currencies. Each issue of Currency Trust Shares would be designated as a separate series and shall be identified by a unique symbol.

The Exchange will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

Proposed Rule 14.11(e)(5)(E)(ii) provides that, following the initial 12-month period following commencement of trading on the Exchange of Currency Trust Shares. the Exchange will consider the suspension of trading in or removal from listing of such series under any of the following circumstances: if

• The Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days;

• The Trust has fewer than 50,000 Currency Trust Shares issued and outstanding;

• If the market value of all Currency Trust Shares issued and outstanding is less than $1,000,000;

• The value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated applicable non-U.S. currency value;

• The Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or

• Such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The proposed rule requires that, upon termination of a Trust, Currency Trust Shares issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

Proposed Rule 14.11(e)(5)(E)(iii) states that the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 14.11(e)(5)(E)(iv) states that the following requirements apply to the trustee of a Trust:

• The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

• No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 14.11(e)(5)(E)(v) states that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 14.11(e)(5)(F) and (G) set forth the requirements respecting limitation of the Exchange liability and market maker accounts (see below for a general discussion of these requirements).

Proposed Rule 14.11(e)(5)(H) states that the Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set forth in Interpretation and Policy .04 to proposed Rule 14.11(e)(5).

Interpretation and Policy .01 to proposed Rule 14.11(e)(5) states that a Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency or currencies deposited with the Trust.

Interpretation and Policy .02 to proposed Rule 14.11(e)(5) states that the Exchange requires that members provide all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

Interpretation and Policy .03 to proposed Rule 14.11(e)(5) provides that transactions in Currency Trust Shares will occur during Regular Trading Hours and both the Pre-Opening and After Hours Trading Sessions.

Interpretation and Policy .04 to proposed Rule 14.11(e)(5) provides that the Exchange may approve an issue of

Currency Trust Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b–4(e) under the Act. Such issue shall satisfy the criteria set forth in the proposed rule, together with the following criteria:

• A minimum of 100,000 shares of a series of Currency Trust Shares is required to be outstanding at commencement of trading (this would not apply to issues trading pursuant to unlisted trading privileges);

• The value of the applicable non-U.S. currency, currencies or currency index must be disseminated by one or more major market data vendors on at least a 15-second delayed basis;

• The Intraday Indicative Value must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the regular market session; and

• The Exchange will implement written surveillance procedures applicable to Currency Trust Shares.

Interpretation and Policy .05 to proposed Rule 14.11(e)(5) states that if the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer would be required to erect a "firewall" around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. Additionally, any advisory committee, supervisory board or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

Interpretation and Policy .06 to proposed Rule 14.11(e)(5) provides that Currency Trust Shares will be subject to the Exchange's equity trading rules.

Proposed Interpretation and Policy .07 to Rule 14.11(e)(5) states that if the Intraday Indicative Value, or the value of the non-U.S. currency or currencies or the currency index applicable to a series of Currency Trust Shares is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If the Exchange becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

6. Commodity Index Trust Shares

The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares that meet the criteria of proposed Rule 14.11(e)(6). The proposed rule change relating to Commodity Index Trust Shares is based on Nasdaq Rule 5711(f).

Proposed Rule 14.11(e)(6)(B) states that proposed Rule 14.11(e)(6) would be applicable only to Commodity Index Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Commodity Index Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(e)(6)(C) defines the term "Commodity Index Trust Shares" to mean (unless the context otherwise requires) a security that: (i) Is issued by a Trust that (a) is a commodity pool as defined in the CEA and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission ("CFTC"); and (b) that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions; and (ii) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive positions in futures contracts on a specified index and cash or short term securities. The term "futures contract" is commonly known as a "contract of sale of a commodity for future delivery" set forth in Section 2(a) of the CEA.

Proposed Rule 14.11(e)(6)(D) states that the Exchange may trade, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares based on one or more securities. The Commodity Index Trust Shares based on particular securities would be designated as a separate series and would be identified by a unique symbol.

Proposed Rule 14.11(e)(6)(E)(i) states that the Exchange will establish a minimum number of Commodity Index Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

Under proposed Rule 14.11(e)(6)(E)(ii), the Exchange will consider the suspension of trading in or removal from listing of a series of Commodity Index Trust Shares under any of the following circumstances:

• Following the initial 12-month period beginning upon the commencement of trading of the Commodity Index Trust Shares, there are fewer than 50 record and/or beneficial holders of Commodity Index Trust Shares for 30 or more consecutive trading days;

• If the value of the applicable underlying index is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust;

• If the net asset value for the trust is no longer disseminated to all market participants at the same time;

• If the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The proposed rule requires that, upon termination of a Trust, the Exchange will delist the Trust's Commodity Index Trust Shares. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

Proposed Rule 14.11(e)(6)(E)(iii) provides that the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 14.11(e)(6)(E)(iv) states that the following requirements apply to the trustee of a Trust:

• The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

• No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 14.11(e)(6)(E)(v) provides that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 14.11(e)(6)(F) and (G) set forth the requirements respecting limitation of the Exchange liability and market maker accounts (see below for a general discussion of these requirements).

Interpretation and Policy .01 to proposed Rule 14.11(e)(6) states that a Commodity Index Trust Share is a Trust Issued Receipt that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions, deposited with the Trust.

Interpretation and Policy .02 to proposed Rule 14.11(e)(6) states that the Exchange requires that members provide all purchasers of newly issued Commodity Index Trust Shares a prospectus for the series of Commodity Index Trust Shares.

Interpretation and Policy .03 to proposed Rule 14.11(e)(6) states that transactions in Commodity Index Trust Shares will occur during Regular Trading Hours and both the Pre-Opening and After Hours Trading Sessions.

Interpretation and Policy .04 to proposed Rule 14.11(e)(6) states that the Exchange will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares.

7. Commodity Futures Trust Shares

Proposed Rule 14.11(e)(7) governs the listing of Commodity Futures Trust Shares. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares that meet the criteria of proposed Rule 14.11(e)(7). Proposed Rule 14.11(e)(7)(B) states that proposed Rule 14.11(e)(7) would apply only to Commodity Futures Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Commodity Futures Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(e)(7)(C) states that the term "Commodity Futures Trust Shares" as used in the proposed Rules means, unless the context otherwise requires, a security that: (i) Is issued by a Trust that (a) is a commodity pool as defined in the CEA and regulations thereunder, and that is managed by a commodity pool operator registered with the CFTC, and (b) holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions; and (ii) is issued and redeemed daily in specified aggregate amounts at net asset value. The term "futures contract" is a "contract of sale of a commodity for future delivery" set forth in Section 2(a) of the CEA. The term "commodity" is defined in Section 1(a)(4) of the CEA.

Proposed Rule 14.11(e)(7)(D) states that the Exchange may trade, either by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares based on an underlying commodity futures contract. Each issue of Commodity Futures Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.

Proposed Rule 14.11(e)(7)(E)(i) states that the Exchange will establish a minimum number of Commodity Futures Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

Proposed Rule 14.11(e)(7)(E)(ii) states that the Exchange will consider the suspension of trading in or removal from listing of a series of Commodity Futures Trust Shares under any of the following circumstances:

- If, following the initial 12-month period beginning upon the commencement of trading of the Commodity Futures Trust Shares: (1) The Trust has fewer than 50,000 Commodity Futures Trust Shares issued and outstanding; or (2) the market value of all Commodity Futures Trust Shares issued and outstanding is less than $1,000,000; or (3) there are fewer than 50 record and/or beneficial holders of Commodity Futures Trust Shares for 30 consecutive trading days;
- If the value of the underlying futures contracts is no longer calculated or available on at least a 15-second delayed basis during the Exchange's regular market session from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust;
- If the net asset value for the Trust is no longer disseminated to all market participants at the same time;
- If the Intraday Indicative Value is no longer disseminated on at least a 15-second delayed basis during the Exchange's regular market session; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The proposed rule requires that, upon termination of a Trust, the Exchange delist Commodity Futures Trust Shares issued by the Trust. A Trust will terminate in accordance with the provisions of the Trust prospectus.

Proposed Rule 14.11(e)(7)(E)(iii) states that the stated term of the Trust shall be stated in the prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 14.11(e)(7)(E)(iv) states that the following requirements apply to the trustee of a Trust:

- The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
- No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 14.11(e)(7)(E)(v) states that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 14.11(e)(7)(F) and (G) describe the requirements for market makers and the limitation of the Exchange liability in Commodity Futures Trust Shares (see below for a general discussion of these requirements).

Proposed Rule 14.11(e)(7)(H) states that the Exchange will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Commodity Futures Trust Shares designated on different underlying futures contracts.

Interpretation and Policy .01 to proposed Rule 14.11(e)(7) would require members trading in Commodity Futures Trust Shares to provide all purchasers of newly issued Commodity Futures Trust Shares a prospectus for the series of Commodity Futures Trust Shares.

Interpretation and Policy .02 to proposed Rule 14.11(e)(7) states that transactions in Commodity Futures Trust Shares will occur during Regular Trading Hours and both the Pre-Opening and After Hours Trading Sessions.

Interpretation and Policy .03 to proposed Rule 14.11(e)(7) states that if the Intraday Indicative Value or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the value of the underlying futures contract occurs. If the interruption to the dissemination of the Intraday Indicative Value or the value of

the underlying futures contract persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the net asset value with respect to a series of Commodity Futures Trust Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

Interpretation and Policy .04 to proposed Rule 14.11(e)(7) states that the Exchange's rules governing the trading of equity securities apply.

Interpretation and Policy .05 to proposed Rule 14.11(e)(7) states that the Exchange will implement written surveillance procedures for Commodity Futures Trust Shares.

The proposed rule change relating to Commodity Futures Trust Shares is based on Nasdaq Rule 5711(g).

8. Partnership Units

Proposed Rule 14.11(e)(8) governs the listing of Partnership Units. Under proposed Rule 14.11(e)(8)(A), the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Partnership Units that meet the criteria of proposed Rule 14.11(e)(8).

Under proposed Rule 14.11(e)(8)(B), the following terms as used in the proposed Rule would, unless the context otherwise requires, have the following meanings: "commodity" is defined in Section 1(a)(4) of the CEA; and a Partnership Unit is a security (a) that is issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities and/or securities; and (b) that is issued and redeemed daily in specified aggregate amounts at net asset value.

Proposed Rule 14.11(e)(8)(C) states that the Exchange may list and trade Partnership Units based on an underlying asset, commodity or security. Each issue of a Partnership Unit would be designated as a separate series and would be identified by a unique symbol.

Proposed Rule 14.11(e)(8)(D)(i) states that the Exchange will establish a minimum number of Partnership Units required to be outstanding at the time of commencement of trading on the Exchange.

Proposed Rule 14.11(e)(8)(D)(ii) provides that the Exchange will consider removal of Partnership Units from listing under any of the following circumstances: if

- Following the initial 12-month period from the date of commencement of trading of the Partnership Units, (1) the partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Partnership Units for 30 or more consecutive trading days; (2) the partnership has fewer than 50,000 Partnership Units issued and outstanding; or (3) the market value of all Partnership Units issued and outstanding is less than $1,000,000;
- The value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or the Exchange stops providing a hyperlink on its Web site to any such investment, commodity or asset value;
- The Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or
- Such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The proposed rule requires that, upon termination of a partnership, the Exchange remove from Exchange listing Partnership Units issued in connection with such partnership. A partnership will terminate in accordance with the provisions of the partnership prospectus.

Proposed Rule 14.11(e)(8)(D)(iii) requires that the term of the partnership be stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Partnership prospectus.

Proposed Rule 14.11(e)(8)(D)(iv) adopts the following requirements that apply to the general partner of a partnership:

- The general partner of a partnership must be an entity having substantial capital and surplus and the experience and facilities for handling partnership business. In cases where, for any reason, an individual has been appointed as general partner, a qualified entity must also be appointed as general partner.
- No change is to be made in the general partner of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 14.11(e)(8)(D)(v) states that voting rights shall be as set forth in the applicable partnership prospectus.

Proposed Rules 14.11(e)(8)(E) and (F) describe the limitation of the Exchange liability and requirements for market makers in Partnership Units (see below for a general discussion of these requirements).

Proposed Rule 14.11(e)(8)(G) states that the Exchange will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Partnership Units designated on different underlying investments, commodities and/or assets.

Interpretation and Policy .01 to proposed Rule 14.11(e)(8) states that the Exchange requires that members provide to all purchasers of newly issued Partnership Units a prospectus for the series of Partnership Units.

The proposed rule change relating to Partnership Units is based on Nasdaq Rule 5711(h).

9. Trust Units

The Exchange proposes to add new Rule 14.11(e)(9) to permit trading, either by listing or pursuant to unlisted trading privileges, of Trust Units. The proposed rule is based on Nasdaq Rule 5711(i).

Proposed Rule 14.11(e)(9)(A) states that the provisions in proposed Rule 14.11(e)(9) are applicable only to Trust Units. In addition, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Trust Units are included within the definition of "security," "securities" and "derivative securities products" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(e)(9)(B) states that the following terms as used in the proposed Rule shall, unless the context otherwise requires, have the following meanings:

- The term "commodity" is defined in Section 1(a)(4) of the CEA.
- A Trust Unit is a security that is issued by a trust or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.

Proposed Rule 14.11(e)(9)(C) states that the Exchange may list and trade Trust Units based on an underlying asset, commodity, security or portfolio. Each issue of a Trust Unit shall be designated as a separate series and shall be identified by a unique symbol.

Proposed Rule 14.11(e)(9)(D)(i) states that the Exchange will establish a minimum number of Trust Units required to be outstanding at the time of commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of each series of Trust Units that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

Proposed Rule 14.11(e)(9)(D)(ii)(a) states that the Exchange will remove Trust Units from listing under any of the following circumstances:

• If following the initial 12-month period following the commencement of trading of Trust Units, (A) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Units for 30 or more consecutive trading days; (B) the trust has fewer than 50,000 Trust Units issued and outstanding; or (C) the market value of all Trust Units issued and outstanding is less than $1,000,000; or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(e)(9)(D)(ii)(b) states that the Exchange will halt trading in a series of Trust Units if the circuit breaker parameters in Rule 11.18 have been reached. In exercising its discretion to halt or suspend trading in a series of Trust Units, the Exchange may consider any relevant factors. In particular, if the portfolio and net asset value per share are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings or net asset value per share persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The proposed rule requires that, upon termination of a trust, the Exchange will remove from Exchange listing Trust Units issued in connection with such trust. A trust will terminate in accordance with the provisions of the prospectus.

Proposed Rule 14.11(e)(9)(D)(iii) requires that the term of the trust be stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the prospectus.

Proposed Rule 14.11(e)(9)(D)(iv) adopts the following requirements applicable to the trustee of a Trust:

• The trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

• No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 14.11(e)(9)(D)(v) states that voting rights shall be as set forth in the prospectus.

Proposed Rules 14.11(e)(9)(E) and (F) describe the requirements for market makers and the limitation of the Exchange liability respecting Trust Units (see below for a general discussion of these requirements).

Interpretation and Policy .01 to proposed Rule 14.11(e)(9) states that the Exchange requires that members provide to all purchasers of newly issued Trust Units a prospectus for the series of Trust Units.

Interpretation and Policy .02 to proposed Rule 14.11(e)(9) states that transactions in Trust Units will occur during Regular Trading Hours and both the Pre-Opening and After Hours Trading Sessions.

Interpretation and Policy .03 to proposed Rule 14.11(e)(9) states that the Exchange will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Trust Units designated on different underlying investments, commodities, assets and/or portfolios.

10. Managed Trust Securities

Proposed Rule 14.11(e)(10) establishes listing standards for Managed Trust Securities. The proposed rule is based on Nasdaq Rule 5711(j). Under proposed Rule 14.11(e)(10)(A), the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Trust Securities that meet the criteria of the proposed Rule. Proposed Rule 14.11(e)(10)(B) states that the proposed Rule would apply only to Managed Trust Securities. Managed Trust Securities are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(e)(10)(C)(i) defines the term "Managed Trust Securities" to mean, unless the context otherwise requires, a security that is registered under the Securities Act of 1933, as amended, and which (1) is issued by a Trust that (a) is a commodity pool as defined in the CEA and regulations thereunder, and that is managed by a commodity pool operator registered with the CFTC, and (b) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the Trust's advisor consistent with the Trust's investment objectives, which will only include, exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, each as disclosed in the Trust's prospectus as such may be amended from time to time; and (2) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value.

Proposed Rule 14.11(e)(10)(C) also includes the following definitions concerning Managed Trust Securities:

• Under proposed Rule 14.11(e)(10)(C)(ii), the term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Trust that will form the basis for the Trust's calculation of net asset value at the end of the business day.

• Under proposed Rule 14.11(e)(10)(C)(iii), the term "Intraday Indicative Value" is the estimated indicative value of a Managed Trust Security based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.

• Under proposed Rule 14.11(e)(10)(C)(iv), the term "Reporting Authority" in respect of a particular series of Managed Trust Securities means the Exchange, an institution, or a reporting or information service designated by the Exchange or by the Trust or the exchange that lists a particular series of Managed Trust Securities (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value; the Disclosed Portfolio; the amount of any cash distribution to holders of Managed Trust Securities, net asset value, or other information relating to the issuance, redemption or trading of Managed Trust Securities. A series of Managed Trust Securities may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(e)(10)(D) states that the Exchange may trade, either by listing or pursuant to unlisted trading privileges, Managed Trust Securities based on the underlying portfolio of exchange-traded futures and/or certain currency forward contracts described in the related prospectus. Each issue of Managed Trust Securities shall be designated as a separate trust or series and shall be identified by a unique symbol.

Under proposed Rule 14.11(e)(10)(E)(i), Managed Trust Securities will be listed and traded on the Exchange subject to application of the following initial listing criteria:

• The Exchange will establish a minimum number of Managed Trust Securities required to be outstanding at the time of commencement of trading on the Exchange.

• The Exchange will obtain a representation from the issuer of each series of Managed Trust Securities that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Under proposed Rule 14.11(e)(10)(E)(ii), each series of Managed Trust Securities will be listed and traded on the Exchange subject to application of the following continued listing criteria:

• The Intraday Indicative Value for Managed Trust Securities will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours.

• The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

• The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

Under proposed Rule 14.11(e)(10)(E)(ii)(c), the Exchange will consider the suspension of trading in or removal from listing of a series of Managed Trust Securities under any of the following circumstances: if

• Following the initial 12-month period beginning upon the commencement of trading of the Managed Trust Securities: (A) The Trust has fewer than 50,000 Managed Trust Securities issued and outstanding; (B) the market value of all Managed Trust Securities issued and outstanding is less than $1,000,000; or (C) there are fewer than 50 record and/or beneficial holders of Managed Trust Securities for 30 consecutive trading days;

• The Intraday Indicative Value for the Trust is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;

• The Trust issuing the Managed Trust Securities has failed to file any filings required by the Securities and Exchange Commission or if the Exchange is aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Trust with respect to the series of Managed Trust Securities; or

• Such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(e)(10)(E)(ii)(d) states that, if the Intraday Indicative Value of a series of Managed Trust Securities is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Trust Securities is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in Rule 11.18. In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Trust Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

Proposed Rule 14.11(e)(10)(E)(ii)(e) states that upon termination of a Trust, the Exchange requires that Managed Trust Securities issued in connection with such Trust be removed from Exchange listing. A Trust will terminate in accordance with the provisions of the Trust prospectus.

Proposed Rule 14.11(e)(10)(E)(iii) states that the term of the Trust shall be stated in the prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 14.11(e)(10)(E)(iv) establishes the following requirements applicable to the trustee of a Trust:

• The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

• No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 14.11(e)(10)(E)(v) states that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 14.11(e)(10)(F) and (G) describe the regulatory requirements for registered market makers in Managed Trust Securities, and the limitation of the Exchange liability respecting Managed Trust Securities (see below for a general discussion of these requirements).

Proposed Rule 14.11(e)(10)(H) states that the Exchange will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Managed Trust Securities.

In addition to the above, the Interpretations and Policies to proposed Rule 14.11(e)(10) include the following provisions:

Interpretation and Policy .01 to proposed Rule 14.11(e)(10) states that the Exchange requires that members provide all purchasers of newly issued Managed Trust Securities a prospectus for the series of Managed Trust Securities.

Interpretation and Policy .02 to proposed Rule 14.11(e)(10) states that transactions in Managed Trust Securities will occur during Regular Trading Hours and both the Pre-Opening and After Hours Trading Sessions.

Interpretation and Policy .03 to proposed Rule 14.11(e)(10) states that the Exchange's rules governing the trading of equity securities apply.

Interpretation and Policy .04 to proposed Rule 14.11(e)(10) states that the Exchange will implement written surveillance procedures for Managed Trust Securities.

Interpretation and Policy .05 to proposed Rule 14.11(e)(10) states that if the Trust's advisor is affiliated with a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. Personnel who make decisions on the Trust's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable Trust portfolio.

11. Currency Warrants

Proposed Rule 14.11(e)(11) governs the listing of Currency Warrants. The proposed rule change relating to Currency Warrants is based on Nasdaq Rule 5711(k). The listing of Currency Warrant issues is considered on a case-by-case basis. Currency Warrant issues will be evaluated for listing against the following criteria.

Proposed Rule 14.11(e)(11)(A)(i) requires the warrant issuer to have a minimum tangible net worth in excess of $250,000,000 and otherwise to exceed substantially the earnings requirements

set forth in Rule 14.8(b)(2).[23] In the alternative, the warrant issuer will be expected to have a minimum tangible net worth of $150,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 14.8(b)(2), and not to have issued warrants where the original issue price of all the issuer's currency warrant offerings (combined with currency warrant offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of the Exchange exceeds 25% of the warrant issuer's net worth.

Proposed Rule 14.11(e)(11)(A)(ii) states that the term must be one to five years from date of issuance.

Proposed Rule 14.11(e)(11)(A)(iii) requires that there must be a minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of $4,000,000. In the alternative, there must be a minimum public distribution of 2,000,000 warrants together with a minimum number of public warrant holders determined on a case by case basis, an aggregate market value of $12,000,000 and an initial warrant price of $6.

Under proposed Rule 14.11(e)(11)(A)(iv), the warrants will be cash settled in U.S. dollars.

Under proposed Rule 14.11(e)(11)(A)(v), all currency warrants must include in their terms provisions specifying the time by which all exercise notices must be submitted, and that all unexercised warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange (if such warrant issue has not been listed on another organized securities market in the United States).

Under proposed Rule 14.11(e)(11)(B), the Exchange will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Currency Warrants.

Proposed Rule 14.11(e)(11)(C) describes regulatory matters applicable to Currency Warrants. Specifically:

- No member shall accept an order from a customer to purchase or sell a Currency Warrant unless the customer's account has been approved for options trading pursuant to Rule 26.2.
- The provisions of Rule 26.4 apply to recommendations in Currency Warrants and the term "option" as used therein shall be deemed for purposes of this Rule to include such warrants.
- Any account in which a member exercises discretion to trade in Currency Warrants is subject to the provisions of Rule 26.5 with respect to such trading. For purposes of the proposed Rule, the terms, "option" and "options contract" as used in Rule 26.5 shall be deemed to include Currency Warrants.
- Rule 26.3 applies to all customer accounts of a member in which transactions in Currency Warrants are effected. The term "option" as used in Chapter XI, Section 8 shall be deemed to include Currency Warrants.
- Rule 26.17 applies to all public customer complaints received by a member regarding Currency Warrants. The term "option" as used in Rule 26.17 shall be deemed to include such warrants.
- Members participating in Currency Warrants shall be bound to comply with the Communications and Disclosures rule of the Financial Industry Regulatory Authority ("FINRA"), as applicable, as though such rule were part of these Rules.

Under proposed Rule 14.11(e)(11)(D), trading on the Exchange in any Currency Warrant will be halted whenever the Exchange deems such action appropriate in the interests of a fair and orderly market or to protect investors. Trading in Currency Warrants that have been the subject of a halt or suspension by the Exchange may resume if the Exchange determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading.

Proposed Rule 14.11(e)(11)(E) governs reporting of warrant positions. Proposed Rule 14.11(e)(11)(E)(i) would require each member to file with the Exchange a report with respect to each account in which the member has an interest, each account of a partner, officer, director, or employee of such member, and each customer account that has established an aggregate position (whether long or short) of 100,000 warrants covering the same underlying currency, combining for purposes of the proposed Rule: (a) Long positions in put warrants and short positions in call warrants, and (b) short positions in put warrants with long positions in call warrants. The report shall be in such form as may be prescribed by the Exchange and shall be filed no later than the close of business on the next day following the day on which the transaction or transactions requiring the filing of such report occurred.

Proposed Rule 14.11(e)(11)(E)(ii) states that whenever a report shall be required to be filed with respect to an account pursuant to the proposed Rule, the member filing the same must file with the Exchange such additional periodic reports with respect to such account as the Exchange may from time to time require.

Proposed Rule 14.11(e)(11)(E)(iii) states that all reports required by the proposed Rule shall be filed with the Exchange in such manner and form as prescribed by the Exchange.

C. General Provisions

To the extent not specifically addressed in the respective proposed rules, the following general provisions apply to all of the proposed rules and subject securities affected by the proposed rules (the "securities"):

1. Trading Rules

The Exchange deems the securities to be equity securities, thus rendering trading in the securities subject to the Exchange's existing rules governing the trading of equity securities. The securities will trade on the Exchange during Regular Trading Hours, as well as during the Pre-Opening Session and the After Hours Trading Session. The Exchange has appropriate rules to facilitate transactions in the securities during all trading sessions. The minimum price increment for quoting and entry of orders in equity securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00 for which the minimum price increment for order entry is $0.0001.[24]

2. Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks

[23] Rule 14.8(b)(2) sets forth initial listing standards for primary equity securities.

[24] *See, e.g.*, Rule 11.11. Regulation NMS Rule 612, Minimum Pricing Increment, provides:

a. No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share.

b. No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.0001 if that bid or offer, order, or indication of interest is priced less than $1.00 per share.

c. The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

associated with trading the securities. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of the securities (and/or that the securities are not individually redeemable); (2) Exchange Rule 3.7, which imposes suitability obligations on the Exchange members with respect to recommending transactions in the securities to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued securities prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the securities. Members purchasing securities for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the securities are subject to various fees and expenses described in the registration statement. If applicable, the Information Circular will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Circular also will disclose the trading hours of the securities and, if applicable, the Net Asset Value ("NAV") calculation time for the securities. The Information Circular will disclose that information about the securities and the corresponding indexes, if applicable, will be publicly available on the Web site for the securities. The Information Circular will also reference, if applicable, the fact that there is no regulated source of last-sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities or futures contracts on which the value of the securities may be based.

The Information Circular also will reference the risks involved in trading the securities during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminate and, if applicable, the risks involved in trading the securities during Regular Trading Hours when the Intraday Indicative Value may be static or based in part on the fluctuation of currency exchange rates when the underlying markets have closed prior to the close of the Exchange's Regular Trading Hours.

3. Limitation of Exchange Liability

Neither the Exchange, any agent of the Exchange, nor the Reporting Authority (if applicable), shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable underlying index or asset value; the current value of the applicable positions or interests required to be deposited to a Trust, if applicable, in connection with issuance of the securities; net asset value; or any other information relating to the purchase, redemption, or trading of the securities, resulting from any negligent act or omission by the Exchange, any agent of the Exchange, or the Reporting Authority (if applicable), or any act, condition or cause beyond the reasonable control of the Exchange, any agent of the Exchange, or the Reporting Authority (if applicable), including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in the applicable positions or interests.

4. Market Maker Accounts

A registered market maker in the securities described below must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading in:

- In the case of Commodity-Based Trust Shares, the applicable underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered market maker may have or over which it may exercise investment discretion (the "Underlying Commodities");
- In the case of Currency Trust Shares, the applicable underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, which the registered market maker may have or over which it may exercise investment discretion (the "Underlying Currencies");
- In the case of Commodity Index Trust Shares, the applicable physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, which the registered market maker may have or over which it may exercise investment discretion (the "Underlying Commodity Index Assets");
- In the case of Commodity Futures Trust Shares, the applicable underlying commodity, related futures or options on futures, or any other related derivatives, which the registered market maker may have or over which it may exercise investment discretion (the "Underlying Commodity Futures");
- In the case of Partnership Units, the applicable underlying asset or commodity, related futures or options on futures, or any other related derivatives, which the registered market maker may have or over which it may exercise investment discretion (the "Underlying Partnership Unit Assets");
- In the case of Trust Units, the applicable underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered market maker may have or over which it may exercise investment discretion (the "Underlying Trust Unit Assets"); and
- In the case of Managed Trust Securities, the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, which a registered market maker may have or over which it may exercise investment discretion (the "Underlying Managed Trust Assets").

No registered market maker in the above mentioned securities shall trade in the respective Underlying Commodities, Underlying Currencies, Underlying Commodity Index Assets, Underlying Commodity Futures, Underlying Partnership Unit Assets, Underlying Trust Unit Assets, and/or the Underlying Managed Trust Assets (collectively, the "Underlying Assets") in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange.

In addition to the existing obligations under Exchange rules regarding the production of books and records (*see, e.g.*, Rule 4.2), a registered market maker in the above mentioned securities is required to make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable Underlying Assets as may be requested by the Exchange.

5. Surveillance

The Exchange states that its surveillance procedures are adequate to address any concerns about the trading of the securities on the Exchange. Trading of the securities on the Exchange will be subject to the Exchange's surveillance procedures during all trading sessions in order to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the securities on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange may obtain information via the ISG from other exchanges who are members or affiliates of the ISG or any other exchanges with which the Exchange has comprehensive surveillance sharing agreements.[25]

In addition, to the extent that a fund invests in futures contracts, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

As a general matter, the Exchange has regulatory jurisdiction over its members and their associated persons, which includes any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member that does business only in commodities or futures contracts would not be subject to the Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

6. Trading Halts

With respect to trading halts, in addition to the halt requirements in the proposed rules, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the securities. Trading in the securities may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the securities inadvisable. These may include: (1) The extent to which trading in the underlying asset or assets is not occurring; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the securities will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" Rule 11.18(d) or by the halt or suspension of the trading of the current underlying asset or assets.

If the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets (*e.g.*, securities, commodities, currencies, futures contracts, or other assets) is not being disseminated as required, the Exchange may halt trading during the day in which such interruption to the dissemination occurs. If the interruption to the dissemination of the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the net asset value with respect to a series of the securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

7. Suitability

Currently, Exchange Rule 3.7 governs Recommendations to Customers (Suitability). Prior to the commencement of trading of any inverse, leveraged, or inverse leveraged securities, the Exchange will inform its members of the suitability requirements of Exchange Rule 3.7 in an Information Circular. Specifically, members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's other securities holdings, financial situation and needs, and (2) the customer can evaluate the risks of the recommended transaction and is financially able to bear the risks of an investment in the securities.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009) ("FINRA Regulatory Notices"). Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices. The Information Circular will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities.

The Exchange notes that, for such inverse, leveraged, and inverse leveraged securities, the corresponding funds seek leveraged, inverse, or leveraged inverse returns on a daily basis, and do not seek to achieve their stated investment objective over a period of time greater than one day because compounding prevents the funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a leveraged multiple (+200%), the inverse (−100%) or a leveraged inverse multiple (−200%) of the period return of the applicable benchmark and may differ significantly from these multiples. The Exchange's Information Circular, as well as the applicable registration statement, will provide information regarding the suitability of an investment in such securities.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[27] which requires, among other things, that rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it has previously approved substantively identical listing standards

[25] For a list of the current members and affiliate members of ISG, see *www.isgportal.com*.

[26] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

for the listing and trading of the Subject Securities on Nasdaq.[28]

A. Generic Listing Standards

Rule 19b–4(e) under the Act[29] provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Section (c)(1) of Rule 19b–4,[30] if the Commission has approved, pursuant to Section 19(b) of the Act,[31] the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. The Exchange is proposing to: (i) Amend the continued generic listing standards for Equity Index-Linked Securities and Commodity-Linked Securities under amended Rule 14.11(d); (ii) adopt initial and continued generic listing standards for Fixed Income-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities under amended Rule 14.11(d); (iii) adopt generic listing standards for Index-Linked Exchangeable Notes under proposed Rule 14.11(e)(1); and (iv) adopt generic listing standards for Currency Trust Shares under proposed Rule 14.11(e)(5), pursuant to which the Exchange will be able to list and trade such securities without Commission approval of each individual product under Rule 19b–4(e).[32] Accordingly, any securities that the Exchange lists and/or trades pursuant to BATS Rules 14.11(d), 14.11(e) and 14.11(h), as proposed, must satisfy the standards set forth therein.[33]

1. Equity Index-Linked Securities and Commodity Linked Securities

The Commission has previously approved, pursuant to Section 19(b) of the Act and in accordance with Rule 19b–4(e) thereunder, the adoption of generic initial and continued listing standards for the listing and trading of Equity Index-Linked Securities and Commodity-Linked Securities on the Exchange, so that securities that satisfy such proposed generic listing standards for Equity Index-Linked Securities and Commodity-Linked Securities may commence trading on the Exchange without public comment and Commission approval.[34] The Commission notes that it has previously approved the same generic listing standards for Equity Index-Linked Securities and Commodity-Linked Securities for Nasdaq.[35] The Commission believes that, because the proposed continued listing requirements under proposed Rules 14.11(d)(2)(K)(i)(b) and 14.11(d)(2)(K)(ii)(b) for Equity Index-Linked Securities and Commodity-Linked Securities, respectively,[36] are substantively identical to those of Nasdaq and present no unique or novel regulatory issues, such proposed requirements are reasonably designed to protect investors and the public interest. Specifically, and as further discussed above, under the proposed continued listing standards, BATS would commence delisting or removal proceedings of a series of Equity Index-Linked Securities or Commodity-Linked Securities if: (i) The initial listing criteria are not continuously maintained (subject to certain exceptions in the case of Equity Index-Linked Securities as described above); (ii) the aggregate market value or principal amount publicly held is less than $400,000; (iii) the value of the index or Reference Asset is no longer available or being disseminated; or (iv) if circumstances exist which make further dealings in the securities on BATS inadvisable. The Commission believes that the proposed continued listing standards are adequately designed to ensure transparency of key values and information regarding the securities and will help ensure a minimum level of liquidity for such securities to allow for the maintenance of fair and orderly markets.

2. Fixed Income Index-Linked Securities, Futures Linked Securities, and Multifactor Index-Linked Securities

In addition, the Commission has previously approved the adoption of generic initial and continued listing standards for Fixed-Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, each of which are specific types of "Index-Linked Securities," on Nasdaq.[37] Consistent with its previous orders, the Commission believes that the generic listing standards proposed by the Exchange for Fixed-Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities should fulfill the intended objective of Rule 19b–4(e) by allowing those Additional Linked Securities that satisfy the generic listing standards to commence trading without public comment and Commission approval.[38] The Exchange's ability to rely on Rule 19b–4(e) to list and trade Additional Linked Securities that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly. In addition, the Commission believes the Exchange's proposal to list and trade the Additional Linked Securities will provide an additional avenue for investors to achieve desired investment objectives through the purchase of Index-Linked Securities, and will benefit investors by increasing competition among markets that trade Index-Linked Securities.

a. Listing and Trading Rules

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Fixed Income-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities pursuant to Rule 19b–

[28] *See* Nasdaq Rules 5710(d); 5710(k)(i)–(iv); Commentary .01 to Rule 5710; 5711(a)–(k); and 5730. The Exchange has represented that there are no material substantive differences between the proposed rules and the Nasdaq Rules on which they are based.

[29] 17 CFR 240.19b–4(e)

[30] 17 CFR 240.19b–4(c)(1).

[31] 15 U.S.C. 78s(b).

[32] 17 CFR 240.19b–4(e).

[33] Under the proposal, the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b–4(e) for Linked Securities or Currency Trust Shares would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular series of Linked Securities or Currency Trust Shares. *See* introductory paragraphs to Rule 14.11(d)(2) and proposed Rule 14.11(e)(5)(H) (providing that BATS may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities or Currency Trust Shares, respectively, that do not otherwise meet the generic listing standards set forth in the relevant rules applicable to them).

[34] *See* Securities Exchange Act Release Nos. 54167 (July 18, 2009), 71 FR 42145 (July 25, 2006) (SR–Nasdaq–2006–002) (approving generic listing standards for Equity Index-Linked Securities on Nasdaq) and 56910 (December 5, 2007), 72 FR 70628 (December 12, 2007) (SR–Nasdaq–2007–071) (approving generic listing standards for Commodity-Linked Securities).

[35] *See* Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (Nasdaq–2012–013) (approving generic listing standards for Equity Index-Linked Securities and Commodity-Linked Securities).

[36] *See supra* note 5.

[37] *See supra* note 35.

[38] The Commission notes that the failure of a particular Additional Linked Security issue to satisfy the proposed generic initial listing standards pursuant to Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular Linked Security. *See supra* note 33.

4(e) on the Exchange. Such Additional Linked Securities listed under the proposed standards will be subject to the full panoply of BATS rules and procedures that govern the trading of Linked Securities, and also the rules and procedures that govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to members, customer suitability requirements, and market maker obligations. In addition, the Additional Linked Securities will be subject to the asset/equity requirements and tangible net worth requirements applicable to Linked Securities, as well as the minimum holder and distribution requirements, principal/market value requirements, and term thresholds for Linked Securities.[39] In addition, as set forth more fully above, the proposed listing criteria for Fixed Income-Linked Securities include additional requirements relating to relative weighting, outstanding principal, market capitalization and diversification. These requirements are designed to ensure that the trading markets for index components underlying the Linked Securities are adequately capitalized and sufficiently liquid, and that no one component dominates the index. Further, the proposed listing criteria for Futures Linked Securities require, subject to certain limited exceptions, that the pricing information for components be derived from an ISG member market or its affiliate, or a market with which BATS has a comprehensive surveillance sharing agreement. The Commission believes that these requirements should significantly minimize the potential for manipulation.

The Exchange's proposed requirements for Multifactor Index-Linked Securities are linked to criteria for other types of Linked Securities set forth in Rule 14.11(d)(2)(K), including the proposed standards applicable to Fixed Income-Linked Securities and Futures-Linked Securities. Accordingly, any underlying Reference Asset for a Multifactor-Index Linked Security would have to satisfy the criteria set out in the Exchange's rules for Reference Assets underlying other Linked Securities.

The generic listing standards permit listing of Additional Linked Securities if the Commission previously approved the underlying index for trading in connection with another derivative product. The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then the Exchange may rely on this finding, provided that the conditions set forth in the Commission's approval order continue to be satisfied.

The Commission believes that the proposed continued listing requirements for the Additional Linked Securities are reasonably designed to protect investors and the public interest. Under the proposed continued listing standards, BATS would commence delisting or removal proceedings of a series of Fixed Income Index-Linked Securities, Futures-Linked Securities, or Multifactor Index-Linked Securities if: (i) The initial listing criteria are not continuously maintained; (ii) the aggregate market value or principal amount publicly held is less than $400,000; (iii) the value of the Reference Asset is no longer available or being disseminated; or (iv) if circumstances exist which make further dealings in the securities on BATS inadvisable. The Commission believes that the proposed continued listing standards are adequate to ensure transparency of key values and information regarding the Additional Linked Securities. The Commission further believes that the continued listing standards will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series of such securities if circumstances warrant such action.

b. Dissemination of Information

The Additional Linked Securities will be subject to the Reference Asset information dissemination requirements applicable to all Linked Securities.[40] The proposed listing requirements for Additional Linked Securities also require that: (i) In the case of Fixed Income-Linked Securities, the Reference Asset must be widely disseminated to the public at least once per business day; and (ii) in the case of Futures-Linked Securities and Multifactor Index-Linked Securities, the Reference Asset must be, and, if the security is periodically redeemable, the Intraday Indicative Value of the security also must be, widely disseminated at least every 15 seconds during the Regular Market Session. In addition, the Additional Linked Securities will be subject to the trading halts requirements applicable to all Linked Securities, which provide that BATS may halt trading during the day on which an interruption to the dissemination of the Intraday Indicative Value (if required to be disseminated) or the index or Reference Asset value occurs, and that BATS will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.[41] The Commission believes that the proposed rules are reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Additional Linked Securities appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

The Additional Linked Securities will be subject to the surveillance procedure requirements applicable to Linked Securities.[42] In addition, the Exchange has represented that trading of the Additional Linked Securities on BATS will be subject to the Exchange's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Linked Securities on BATS.[43] Further, the proposed listing criteria for Futures Linked Securities require, subject to certain limited exceptions, that the pricing information for components be derived from an ISG member market or its affiliate, or a market with which BATS has a comprehensive surveillance sharing agreement.

d. Additional Provisions

The Additional Linked Securities will be subject to the requirement that issuers comply with Rule 10A–3 under the Act.[44] In addition, the Additional Linked Securities will be subject to the index calculation and "firewall" requirements applicable to all Linked Securities.[45] The Commission believes

[39] *See* Rules 14.11(d)(2)(E) and (F), *supra* note 12.

[40] *See* proposed Rule 14.11(d)(2)(G)(ii) (formerly Rule 14.11(d)(2)(i)(ii)), which provides that, subject to certain exceptions, the current value of the index or Reference Asset of a Linked Securities must be widely disseminated at least every 15 seconds during the Exchange's regular market session.

[41] *See* proposed Rule 14.11(d)(2)(H) (formerly Rule 14.11(d)(2)(J)).

[42] *See* proposed Rule 14.11(d)(2)(K) (formerly Rule 14.11(d)(2)(I)), which provides that BATS will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

[43] *See* Notice, *supra* note 4, 78 FR at 41478.

[44] 17 CFR 240.10A–3. *See* Rule 14.11(d)(2)(F).

[45] *See* proposed Rule 14.11(d)(2)(G)(i) (formerly Rule 14.11(d)(2)(I)(i)), which requires that if an index is maintained by a broker-dealer, the broker-dealer must erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and that the index must be calculated by a third party who is not a broker-dealer.

that the "firewall" restrictions applicable to Linked Securities are designed to prevent the use and dissemination of material, non-public information regarding an underlying index and prevent conflicts of interest with respect to personnel of a broker-dealer maintaining an index underlying such securities. BATS has also represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.[46] The Commission believes that these requirements, taken together, should help to minimize the potential for manipulation and allow for the maintenance of a fair and orderly market in the Additional Linked Securities.

Proposed Interpretations and Policies .01(b) to Rule 14.11(d)(2)(K) would impose additional reporting requirements, trading restrictions and books and records obligations on members acting as registered market makers in Linked Securities. The Commission believes that such restrictions, reporting and record-keeping requirements are reasonably designed to promote a fair and orderly market for Linked Securities and will assist the Exchange in identifying situations potentially susceptible to manipulation.

In addition, the Exchange has represented that prior to the commencement of trading in a series of Additional Linked Securities, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Additional Linked Securities.[47] The Commission believes that the Exchange's proposal should ensure that its members have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the Additional Linked Securities.

As discussed above, the Exchange proposes to make certain technical revisions so that the Additional Linked Securities are included in the provisions of Rule 14.11(d) that apply to all Linked Securities. The Commission finds that the technical revisions to BATS Rule 14.11(d) are reasonable and promote transparency and consistent application of certain rules imposed with respect to types of Linked Securities.

The Commission notes that the proposed generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities are substantively identical to those previously approved by the Commission for the listing and trading of Fixed Income Index-Linked Securities, Futures Linked Securities and Multifactor Index-Linked Securities on Nasdaq.[48] As such, the Commission believes that the proposed generic listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

3. Index-Linked Exchangeable Notes

As discussed above, the Commission has previously approved the adoption of generic listing standards for various classes of new derivative securities products to be listed and traded pursuant to Rule 19b–4(e).[49] In addition, the Commission has previously approved the adoption of generic initial and continued listing standards for Index-Linked Exchangeable Notes on Nasdaq.[50] Consistent with its previous orders, the Commission believes that the generic listing standards proposed by the Exchange for Index-Linked Exchangeable Notes should fulfill the intended objective of Rule 19b–4(e) by allowing those Index-Linked Exchangeable Notes that satisfy the generic listing standards to commence trading without public comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) to list and trade Index-Linked Exchangeable Notes that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly. In addition, the Commission believes the Exchange's proposal to list and trade Index-Linked Exchangeable Notes will provide an additional avenue for investors to achieve desired investment objectives through the purchase of index-linked exchangeable debt securities, and will benefit investors by increasing competition among markets that trade index-linked exchangeable debt.

a. Listing and Trading Rules

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked Exchangeable Notes pursuant to Rule 19b–4(e). Index-Linked Exchangeable Notes listed under the standards will be subject to the full panoply of BATS rules and procedures that currently govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to members, customer suitability requirements, and market maker obligations.

The Commission is satisfied with the Exchange's development of specific listing and delisting criteria for Index-Linked Exchangeable Notes. As described more fully above, the proposed listing criteria include minimum tangible net worth and earnings requirements for issuers. These criteria are, in part, intended to ensure that the issuer has enough assets to meet its obligations under the terms of the note and should help to reduce systematic risk. The proposed listing criteria also include minimum holder and distribution requirements, which should serve to establish a minimum level of liquidity for each series of Index-Linked Exchangeable Notes to allow for maintenance of fair and orderly markets.

The proposed initial listing criteria also contain minimum requirements for the indices the Index-Linked Exchangeable Notes can be linked to, and the underlying components of those indices. The Exchange's proposed requirements for indices underlying Index-Linked Exchangeable Notes are linked to other approved criteria for index-related products. Accordingly, any underlying index would have to follow the criteria adopted by the Exchange and already in the Exchange's rules for that index, including the criteria for component stocks. These requirements will generally contain, among other things, minimum market capitalization, trading volume, and concentration requirements that are designed to reduce manipulation concerns and ensure a minimum level of liquidity for component securities. Accordingly, the Commission believes that these criteria should serve to ensure that the underlying stocks of underlying indices of Index-Linked Exchangeable Notes are well capitalized and actively traded, and should thus significantly minimize the potential for manipulation.

The Commission believes that the proposed continued listing requirements for Index-Linked Exchangeable Notes are reasonably designed to protect investors and the public interest. As further discussed above, under the proposed continued listing standards, beginning 12 months after the initial issuance of a series of

[46] *See* Notice, *supra* note 4, 78 FR at 41478.

[47] *See id.* at 41477.

[48] *See* Nasdaq Rule 5710(k)(iii), (k)(iv) and Commentary .01.

[49] *See supra* note 34.

[50] *See supra* note 35 (approving generic listing standards for Index-Linked Exchangeable Notes).

Index-Linked Exchangeable Notes, BATS would consider suspension of trading in or removal of listing of such series if: (i) The series has fewer than 50,000 notes issued and outstanding; (ii) the outstanding market value of the series held is less than $1,000,000; or (iii) if circumstances exist which make further dealings in the securities on the Exchange inadvisable. The Commission believes that the continued listing standards will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

The proposed rule requires that an estimate of the value of a note for each series of Index-Linked Exchangeable Notes will be calculated and widely disseminated at least every 15 seconds, and that the value of any underlying index will also be publicly disseminated to investors, on a real time basis, every 15 seconds.[51] In addition, the Exchange has represented that it may halt trading during the day on which an interruption to the dissemination of either of these values occurs, and that BATS will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.[52] The Commission believes that the proposed rules are reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Index-Linked Exchangeable Notes appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

The Exchange has represented that trading of the Index-Linked Exchangeable Notes on BATS will be subject to the Exchange's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Index-Linked Exchangeable Notes on BATS.[53]

d. Additional Provisions

The Commission notes that the proposed listing criteria requires that if the underlying index is maintained by a broker-dealer, the index must be calculated by a third party who is not a broker-dealer, and the broker-dealer is required to erect firewalls around its personnel who have access to information concerning changes in and adjustments to the index.[54] BATS also has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.[55] The Commission believes that such firewalls and information barrier policies and procedures are adequate to prevent the misuse of material, non-public information regarding changes to the underlying index, and to address the unauthorized transfer and misuse of material, non-public information.

In addition, the Exchange has represented that prior to the commencement of trading in a series of Index-Linked Exchangeable Notes, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Index-Linked Exchangeable Notes.[56] The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the Index-Linked Exchangeable Notes.

The Commission notes that the proposed generic listing standards for Index-Linked Exchangeable Notes are substantively identical to those previously approved by the Commission for the listing and trading of Index-Linked Exchangeable Notes on Nasdaq.[57] As such, the Commission believes that the proposed generic listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

4. Currency Trust Shares

As discussed above, the Commission has previously approved the adoption of generic listing standards for various classes of new derivative securities products to be listed and traded pursuant to Rule 19b–4(e).[58] In addition, the Commission has previously approved generic listing standards for the listing and trading of Currency Trust Shares pursuant to Rule 19b–4(e) on Nasdaq.[59] The Commission believes that proposed generic listing standards for Currency Trust Shares should fulfill the intended objective of Rule 19b–4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without public comment and Commission approval.[60] The Exchange's ability to rely on Rule 19b–4(e) to list and trade Currency Trust Shares that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly. In addition, the Commission believes the Exchange's proposal to list and trade Currency Trust Shares will provide an additional avenue for investors to achieve desired investment objectives through the purchase of Currency Trust Shares, and will benefit investors by increasing competition among markets that trade Currency Trust Shares.

a. Listing and Trading Rules

The Commission finds that the proposal contains adequate rules and procedures to govern the listing and trading of Currency Trust Shares pursuant to Rule 19b–4(e) on the Exchange. The Currency Trust Shares listed and traded under the proposed listing standards will be subject to the full panoply of BATS rules and procedures that govern the trading equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to members, customer suitability requirements, and market maker obligations.

For the Exchange to approve an issue of Currency Trust Shares for listing under the generic listing standards, a minimum of 100,000 Currency Trust Shares must be outstanding at the commencement of trading. This requirement should serve to ensure a minimum level of liquidity for each series of Currency Trust Shares, to allow for the maintenance of fair and orderly markets and reduce the potential for manipulation.

[51] Proposed rules 14.11(e)(1)(F) and (G).

[52] *See* Notice, *supra* note 4, 78 FR at 41478.

[53] *See id.*

[54] *See* proposed Rule 14.11(e)(1) (which requires that an Issuer Index comply with the requirements of one of the following: (A) The procedures and criteria set forth in BATS Options Rules 29.6(b) and (c), or (B) the criteria set forth in Rules 14.11(e)(12)(B)(iii) and (iv), the index concentration limits set forth in BATS Options Rule 29.6, and BATS Options Rule 29.6(b)(12) insofar as it relates to BATS Options Rule 29.6(b)(6).

[55] *See* Notice, *supra* note 4, 78 FR at 41478.

[56] *See id.* at 41477.

[57] *See* Nasdaq Rule 5711(a).

[58] *See supra* note 34.

[59] *See supra* note 35 (approving generic listing standards for Currency Trust Shares).

[60] The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular series of Currency Trust Shares. *See supra* note 33.

As further discussed above, beginning 12 months after the initial issuance of a series of Currency Trust Shares, the Exchange may consider suspending trading in, or removing from listing, such series if: (i) The trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days; (ii) the trust has fewer than 50,000 Currency Trust Shares issued and outstanding; (iii) the market value of all Currency Trust Shares issued and outstanding is less than $1,000,000; (iv) the Intraday Indicative Value of the Currency Trust Shares or the value of the underlying currency is no longer calculated or being disseminated on at least a 15-second delayed basis; or (iv) if circumstances exist which make further dealings in the securities on BATS inadvisable. The Commission believes that the proposed continued listing standards are adequate to ensure transparency of key values and information regarding the Currency Trust Shares, and will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

For Currency Trust Shares to be approved for listing on the Exchange, or for trading pursuant to unlisted trading privileges, under the generic listing standards, each issue must satisfy the following requirements: (i) The value of the underlying non-U.S. currency, currencies, or currency index, as the case may be, must be disseminated by one or more major market data vendors on at least a 15-second delayed basis; and (ii) the Intraday Indicative Value must be calculated and widely disseminated by BATS or one or more major market data vendors on at least a 15-second basis during the Regular Market Session. In addition, if either the Intraday Indicative Value or the value of the underlying non-U.S. currency, currencies, or currency index, as the case may be, is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs, and if such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Further, if the Exchange becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants. The proposed generic listing standards seek to ensure a minimum level of transparency with respect key values of the underlying currency assets, and establish events that would trigger a trading halt in Currency Trust Shares when the availability of such key information related to Currency Trust Shares becomes impaired. The Commission believes that the proposed rules are reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Currency Trust Shares appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

For an issue of Currency Trust Shares to be approved for listing or trading pursuant to unlisted trading provision under the generic listing standards, BATS must implement written surveillance procedures applicable to Currency Trust Shares. The Exchange has represented that trading of Currency Trust Shares on BATS will be subject to the Exchange's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Currency Trust Shares on BATS.[61]

d. Other Provisions

BATS has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, Currency Trust Shares approved for listing and trading, or trading pursuant to unlisted trading privileges, pursuant to the generic listing standards will be subject to certain firewall requirements. These requirements provide that, if the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. Furthermore, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio. The Commission believes that the proposed "firewall" restrictions applicable to Currency Trust Shares are designed to prevent the use and dissemination of material, non-public information regarding an underlying index and prevent conflicts of interest with respect to personnel of a broker-dealer maintaining an index underlying such securities. BATS has also represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.[62]

The proposed rules contain additional reporting requirements, trading restrictions and books and records obligations on members acting as registered market makers in Currency Trust Shares. The Commission believes that such restrictions, reporting and record-keeping requirements are reasonably designed to promote a fair and orderly market for Currency Trust Shares and will assist the Exchange in identifying situations potentially susceptible to manipulation.

The proposed rules prescribe prospectus delivery requirements for purchasers of each newly issued series of Currency Trust Shares. Further, the Exchange has represented that prior to the commencement of trading in a series of Currency Trust Shares, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Additional Linked Securities.[63] The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the Currency Trust Shares.

The Commission notes that the proposed generic listing standards for Currency Trust Shares are substantively identical to those previously approved by the Commission for the listing and trading of Currency Trust Shares on Nasdaq.[64] As such, the Commission believes that the proposed generic listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably

[61] *See* Notice, *supra* note 4, 78 FR at 41478.

[62] *See id.*

[63] *See id.*

[64] *See* Nasdaq Rule 5711(e).

designed to protect investors and the public interest.

B. Non-Generic Listing Standards

The Exchange is proposing to adopt non-generic listing standards for Trust Certificates, Equity Gold Shares, Commodity-Based Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, and Currency Warrants. BATS would be required to file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of such securities BATS seeks to list and/or trade on the Exchange.

1. Trust Certificates

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of Trust Certificates are consistent with the Act. The Commission believes the Exchange's proposal to list and trade Trust Certificates will benefit investors by increasing competition among markets that trade Trust Certificates. The Commission notes that it has previously approved the adoption of listing standards for Trust Certificates on Nasdaq.[65]

a. Listing and Trading Rules

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Trust Certificates. Prior to listing and/or trading on the Exchange, BATS must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Trust Certificates. All such Trust Certificates listed and/or traded under proposed Rule 14.11(e)(3) will be subject to the full panoply of BATS rules and procedures that currently govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to members, customer suitability requirements, and market maker obligations.

The Commission believes that the proposed criteria under proposed Rule 14.11(e)(3) and in particular, the continued listing requirements under proposed Interpretation and Policy .01 thereto, are reasonably designed to protect investors and the public interest. Specifically, the Exchange must commence delisting or removal proceedings with respect to an issue of Trust Certificates if: (i) The aggregate market value or the principal amount publicly held is less than $400,000; (ii) the value of the index or composite value of the indexes is no longer calculated or widely disseminated as required; or (iii) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings in Trust Certificates on the Exchange inadvisable. The Commission believes that the proposed continued listing standards are adequate to ensure transparency of key values and information regarding the Trust Certificates, and will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

The Exchange has represented that it may halt trading during the day on which an interruption to the dissemination of the Intraday Indicative Value or the value of the underlying index or assets occurs, and that BATS will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.[66] In addition, the Exchange has represented that if it becomes aware that the net asset value applicable to a series of Trust Certificates is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.[67] The Commission believes that the proposal is reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Trust Certificates appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

Pursuant to the proposed rules, BATS will implement written surveillance procedures applicable to Trust Certificates. The Exchange has represented that trading of Trust Certificates on BATS will be subject to the Exchange's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Trust Certificates on BATS.[68]

d. Other Provisions

BATS has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.[69] In addition, the Exchange has represented that prior to the commencement of trading in a series of Trust Certificates, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Trust Certificates.[70]

The Commission notes that the Exchange's proposed listing standards for Trust Certificates are substantively identical to the listing standards for Trust Certificates on Nasdaq.[71] As such, the Commission believes that the proposed listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

2. Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units are consistent with the Act. The Commission believes the Exchange's proposal to list and trade Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units will benefit investors by increasing competition among markets that trade such products. The Commission notes that it has previously approved the adoption of listing standards for Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units on Nasdaq.[72]

a. Listing and Trading Rules

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Commodity-Based Trust Shares, Equity Gold Shares,[73]

[65] *See supra* note 35 (approving listing standards for Trust Certificates).

[66] *See* Notice, *supra* note 4, 78 FR at 41478.

[67] *See id.*

[68] *See id.*

[69] *See id.*

[70] *See id.* at 41477.

[71] *See* Nasdaq Rule 5711(c).

[72] *See supra* note 35.

[73] The proposed listing rules for Equity Gold Shares provide that the provisions set forth in proposed Rule 14.11(e)(4) (Commodity-Based Trust Shares) will apply to Equity Gold Shares. Thus, all of the listing requirements applicable to

Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units on the Exchange. Prior to listing and/or trading on the Exchange, BATS must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units. All such securities listed and/or traded will be subject to the full panoply of the Exchange's rules and procedures that currently govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to members, customer suitability requirements, and market maker obligations. For the initial listing of each series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, the Exchange must establish a minimum number of such securities required to be outstanding at the commencement of trading on the Exchange. In addition, for the initial listing of Trust Units, BATS must obtain a representation from the issuer of a series of Trust Units that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

As further discussed above, the Exchange may consider suspending trading in, or removing from listing, a series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, or Trust Units if there are fewer than 50 record and/or or beneficial holders of such series for 30 or more consecutive trading days. In addition, with respect to Commodity-Based Trust Shares, Equity Gold Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, the Exchange may consider suspending trading in, or removing from listing, a series if there are fewer than 50,000 such securities issued and outstanding or if the market value of all such securities issued and outstanding is less than $1,000,000. The Exchange may also consider suspending trading in, or removing from listing, a series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, or Partnership Units if the value of the underlying benchmark is no longer calculated or available on at least a 15-second delayed basis from an unaffiliated source, or the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis. In the case of Commodity Index Trust Shares and Commodity Futures Trust Shares, the Exchange may further consider suspending trading in, or removing from listing, a series if the net asset value for such series is no longer disseminated to all market participants at the same time. Finally, the Exchange may consider suspending trading in, or removing from listing, such securities if such other event shall occur or condition exists which in the opinion of BATS makes further dealings on the Exchange inadvisable.

The Commission believes that the proposed initial and continued listing standards are adequate to ensure transparency of key values and information regarding the Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, and will help ensure a minimum level of liquidity exists for such securities to minimize the potential for manipulation and allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

The Exchange has represented that it may halt trading during the day on which an interruption to the dissemination of the Intraday Indicative Value or the value of the underlying index or assets occurs, and that BATS will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.[74] In addition, the Exchange has represented that if it becomes aware that the net asset value applicable to a series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, or Trust Units is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.[75] The Commission believes that the proposal is reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, and to maintain a fair and orderly market for such securities.

c. Surveillance

The Exchange has represented that trading of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units on BATS will be subject to the Exchange's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Trust Certificates on BATS.[76] In addition, the proposed rules require BATS to implement written surveillance procedures for Commodity Futures Trust Shares.

d. Other Provisions

The proposed rules impose additional reporting requirements, trading restrictions and books and records obligations on members acting as registered market makers in Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units. The Commission believes that such restrictions, reporting and record-keeping requirements are reasonably designed to promote a fair and orderly market for Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, and will assist the Exchange in identifying situations potentially susceptible to manipulation.

BATS has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, the proposed rules prescribe prospectus delivery requirements for purchasers of each newly issued series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units and Trust Units. Further, the Exchange has represented that prior to the commencement of trading in a series of Commodity-Based Trust Shares, Equity

Commodity-Based Trust Shares will also apply to Equity Gold Shares.

[74] *See* Notice, *supra* note 4, 78 FR at 41478. A similar requirement is contained in the proposed rules relating to Currency Trust Shares, Commodity Futures Trust Shares, and Trust Units.

[75] *See id.* A similar requirement is contained in the proposed rules relating to Currency Trust Shares, Commodity Futures Trust Shares, and Trust Units.

[76] *See id.*

Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading such securities.[77]

The Commission notes that the Exchange's proposed listing standards for Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units are substantively identical to the listing standards for such securities on Nasdaq.[78] As such, the Commission believes that the proposed listing standards for these securities present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

3. Managed Trust Securities

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of Managed Trust Securities are consistent with the Act. The Commission believes the Exchange's proposal to list and trade Managed Trust Securities will benefit investors by increasing competition among markets that trade Managed Trust Securities. The Commission notes that it has previously approved the adoption of listing standards for Managed Trust Securities on Nasdaq.[79]

a. Listing and Trading Rules

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Managed Trust Securities. Prior to listing and/or trading on the Exchange, BATS must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Managed Trust Securities. All Managed Trust Securities listed and/or traded on BATS will be subject to the full panoply of BATS rules and procedures that currently govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to members, customer suitability requirements, and market maker obligations. For the initial listing of each series of Managed Trust Securities, the Exchange must establish a minimum number of Managed Trust Securities required to be outstanding at the commencement of trading. In addition, the Exchange must obtain a representation from the issuer of Managed Trust Securities that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

For continued listing of each series of Managed Trust Securities, the Intraday Indicative Value must be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours.[80] Further, the Disclosed Portfolio must be disseminated at least once daily and made available to all market participants at the same time. The Exchange may also consider the suspension of trading in, or removal from listing of, a series of Managed Trust Securities if: (i) Following the initial 12-month period after commencement of trading on the Exchange of a series of Managed Trust Securities, (A) the trust has fewer than 50,000 securities issued and outstanding, (B) the market value of all securities issued and outstanding is less than $1,000,000, or there are fewer than 50 beneficial holders of such series for 30 or more consecutive trading days; (ii) the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time; (iii) the trust has failed to file any filings required by the Commission or if the Exchange becomes aware that the trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the trust with respect to the series of Managed Trust Securities; or (iv) such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Commission believes that the proposed initial and continued listing and trading standards for Managed Trust Securities are adequate to ensure transparency of key values and information regarding the securities, and will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

The Commission finds that the Exchange's proposed rules with respect to trading halts should help ensure the availability of key values and information relating to Managed Trust Securities and to prevent trading when a reasonable degree of transparency cannot be assured. Under the proposal, if the Intraday Indicative Value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption of such value persists past the trading day in which it occurred, the Exchange must halt trading no later than the beginning of the trading day following the interruption.[81] In addition, if the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Trust Securities is not being disseminated to all market participants at the same time, the Exchange will halt trading in such series of Managed Trust Securities until such time as the NAV or the Disclosed Portfolio is available to all market participants.

c. Surveillance

Pursuant to the proposed rules, BATS will implement written surveillance procedures applicable to Managed Trust Securities. The Exchange has represented that trading of Managed Trust Securities on BATS will be subject to the Exchange's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Managed Trust Securities on BATS.[82]

[77] *See id.* at 41477.

[78] *See* Nasdaq Rules 5711(d) (Commodity-Based Trust Shares), 5711(c) (Equity Gold Shares), 5711(e) (Currency Trust Shares), 5711(f) (Commodity Index Trust Shares), 5711(g) (Commodity Futures Trust Shares), 5711(h) (Partnership Units), and 5711(i) (Trust Units).

[79] *See supra* note 35 (approving listing standards for Managed Trust Securities).

[80] The rules of other national securities exchanges governing the listing and trading of Managed Trust Securities differs in that the rules of other listing exchanges require that the Intraday Indicative Value for such securities be widely disseminated by one or more major market data vendors at least every 15 seconds while Managed Fund Securities trade on those exchanges. *See* NYSE Arca Equities Rule 8.600(d)(2)(A); Nasdaq Rule 5711(j)(v)(B)(1). The Commission understands that Intraday Indicative Values for Managed Trust Securities are calculated and disseminated only during Regular Trading Hours, and therefore the Commission finds that the BATS continued listing criterion, as proposed to be amended, is more consistent with the calculation and dissemination of Intraday Indicative Values for Managed Trust Securities that may trade beyond Regular Trading Hours on the Exchange.

[81] If a series of Managed Trust Securities is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series, as specified in BATS Rule 11.8, as applicable. *See* BATS Rule 11.8 (setting forth rules regarding trading halts for certain derivative securities products).

[82] *See* Notice, *supra* note 4, 78 FR at 41478.

d. Other Provisions

BATS has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.[83] In addition, the proposed rules require that: (i) If the trust's advisor is affiliated with a broker-dealer, the broker-dealer must erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio; (ii) personnel who make decisions on the trust's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable trust portfolio; and (iii) the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio. The Commission believes that the proposed "firewall" restrictions applicable to Managed Trust Securities are reasonably designed to prevent the use and dissemination of material, non-public information regarding the Disclosed Portfolio, prevent conflicts of interest with respect to personnel of a broker-dealer maintaining the Disclosed Portfolio and to promote fair and orderly markets.

The proposed rules prescribe prospectus delivery requirements for purchasers of each newly issued series of Managed Trust Securities. In addition, the Exchange has represented that prior to the commencement of trading in a series of Managed Trust Securities, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Managed Trust Securities.[84]

The proposed rules impose additional reporting requirements, trading restrictions and books and records obligations on registered market makers in Managed Trust Securities. The Commission believes that such restrictions, reporting and record-keeping requirements are reasonably designed to promote a fair and orderly market for Managed Trust Securities, and will assist the Exchange in identifying situations potentially susceptible to manipulation.

The Commission notes that the Exchange's proposed listing standards for Managed Trust Securities are substantively identical to the listing standards for Managed Trust Securities on Nasdaq.[85] As such, the Commission believes that the proposed listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

4. Currency Warrants

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of Currency Warrants are consistent with the Act. The Commission believes the Exchange's proposal to list and trade Currency Warrants will benefit investors by increasing competition among markets that trade Currency Warrants. The Commission notes that it has approved the adoption of listing standards and related rules for Currency Warrants on Nasdaq.[86]

a. Listing and Trading Rules

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Currency Warrants. Prior to listing and/or trading on the Exchange, BATS must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Currency Warrants, and the listing of Currency Warrants will be considered on a case-by-case basis. The Exchange has represented that Currency Warrants are deemed to be equity securities, thus rendering trading in Currency Warrants subject to the Exchange's existing rules governing the trading of equity securities.[87]

The Commission is satisfied with the Exchange's development of specific listing criteria for Currency Warrants. As described more fully above, the proposed listing criteria include minimum tangible net worth and earnings requirements for issuers. These criteria are, in part, intended to ensure that the issuer has enough assets to meet its obligations under the terms of the warrant and should help to reduce systemic risk. The proposed listing criteria also include minimum holder, distribution and market value requirements, which should serve to establish a minimum level of liquidity for each series of Currency Warrants to allow for maintenance of fair and orderly markets.

b. Dissemination of Information

The proposed rules provide that trading on BATS in any Currency Warrant shall be halted whenever BATS deems such action appropriate in the interests of a fair and orderly market or to protect investors. Trading in Currency Warrants that have been the subject of a halt or suspension by BATS may resume if BATS determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading. In addition, the Exchange has represented that it may halt trading in a series of Currency Warrants during the day on which an interruption to the dissemination of the Intraday Indicative Value or the value of the underlying currency occurs, and that BATS will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.[88] The Commission believes that the proposal is reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Currency Warrants appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

The Exchange has represented that trading of Currency Warrants on BATS will be subject to the Exchange's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Currency Warrants on BATS.[89]

d. Other Provisions

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the Exchange has proposed to apply its options customer protection rules to Currency Warrants. In particular, the Commission notes that Currency Warrants will only be sold to options-approved accounts in accordance with BATS Rule 26.2. In addition, the Exchange will apply the options rules for suitability, discretionary accounts, supervision of accounts and public customer complaints to transactions in Currency Warrants, and that members participating in Currency Warrants shall be bound to comply with the Communications and Disclosures rule of FINRA.

[83] *See id.*

[84] *See id.*

[85] *See* Nasdaq Rule 5711(j).

[86] *See supra* note 35. *See also* NOM Rules, Chapter XI, Sections 7, 8, 9, 10 and 24.

[87] *See* Notice, *supra* note 4, 78 FR at 41478.

[88] *See id.*

[89] *See id.*

The proposed rules establish reporting requirements for members holding large positions in Currency Warrants. The Commission believes that such reporting requirements are reasonably designed to promote a fair and orderly market for Currency Warrants, and will assist the Exchange in identifying situations potentially susceptible to manipulation.

BATS has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.[90] In addition, the Exchange has represented that prior to the commencement of trading in a series of Currency Warrants, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Currency Warrants.[91]

The Commission notes that the Exchange's proposed listing standards and regulatory requirements relating to Currency Warrants are substantively identical to the listing standards and regulatory requirements for Currency Warrants listed and traded on Nasdaq.[92] As such, the Commission believes that the proposed listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

C. Additional Representations

As discussed above, the Exchange has represented that the Subject Securities are deemed to be equity securities, thus rendering trading in the Subject Securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Exchange has appropriate rules to facilitate transactions in the Subject Securities during all trading sessions.

(2) The Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Subject Securities on BATS. The Exchange may obtain information via the ISG from other exchanges who are members or affiliates of the ISG or any other exchanges with which the Exchange has comprehensive surveillance sharing agreements.

(3) The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

(4) To the extent a Subject Security holds investments in futures contracts, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Subject Securities. Specifically, the Information Circular will discuss the following: (a) The risks involved in trading the Subject Securities during the Opening Process and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated and, if applicable, the risks involved in trading the Subject Securities during the Regular Market Session when the Intraday Indicative Value may be static or based in part on the fluctuation of currency exchange rates when the underlying markets have closed prior to the close of the Exchange's Regular Market Session; (b) the procedures for purchases and redemptions of the Subject Securities (and/or that the Subject Securities are not individually redeemable); (c) BATS Rule 3.7, which imposes suitability obligations on members with respect to recommending transactions in the securities to customers; (d) how information regarding the Intraday Indicative Value is disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Subject Securities prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) BATS may consider all relevant factors in exercising its discretion to halt or suspend trading in the Subject Securities. Trading in the Subject Securities may be halted because of market conditions or for reasons that, in the view of BATS, make trading in the securities inadvisable. These may include: (a) The extent to which trading in the underlying asset or assets is not occurring; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[93]

(7) Prior to the commencement of trading of any inverse, leveraged, or inverse leveraged Subject Securities, BATS will inform its members of the suitability requirements of BATS Rule 3.7 in the Information Circular.[94] The Information Circular will also reference, among other things, the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged exchange-traded products and options thereon. Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices.

This approval order is based on all of the Exchange's representations. The Commission again notes that the proposed listing standards for the Subject Securities are substantively identical to previously approved listing standards for the corresponding products on Nasdaq.[95]

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[90] *See id.*

[91] *See id.* at 41477.

[92] *See* Nasdaq Rule 5711(k).

[93] In addition, trading in the Subject Securities will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" Rule 11.8(d) or by the halt or suspension of the trading of the current underlying asset or assets. If the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets (*e.g.*, securities, commodities, currencies, futures contracts, or other assets) is not being disseminated as required, BATS may halt trading during the day in which such interruption to the dissemination occurs. If the interruption to the dissemination of the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets persists past the trading day in which it occurred, BATS will halt trading no later than the beginning of the trading day following the interruption. In addition, if BATS becomes aware that the net asset value with respect to a series of the Subject Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

[94] Specifically, members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In connection with the suitability obligation, the Information Circular will also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer. *See* Rule 3.7.

[95] *See supra* notes 28, 35, 48, 57, 64, 71, 78, 85, and 92.

The Commission believes that the proposal should help to facilitate the listing and trading of additional types of exchange-traded products that should enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the Commission believes that the listing and trading criteria for the Subject Securities set forth in amended Rule 14.11(d) and proposed Rule 14.11(e) are reasonably designed to protect investors and the public interest, as discussed herein. For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[96]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[97] that the proposed rule change (SR–BATS–2013–038), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[98]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–21036 Filed 8–28–13; 8:45 am]

BILLING CODE 8011–01–P

[96] 15 U.S.C. 78f(b)(5).

[97] 15 U.S.C. 78s(b)(2).

[98] 17 CFR 200.30–3(a)(12).

FEDERAL REGISTER

Vol. 78 Thursday,
No. 168 August 29, 2013

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Oregon Spotted Frog; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2013–0088; 4500030114]

RIN 1018–AZ56

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Oregon Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for the Oregon spotted frog under the Endangered Species Act. We are proposing critical habitat for this species in Washington and Oregon, and this action fulfills our obligations under the Endangered Species Act and a court-approved settlement agreement. The effect of this regulation will be to designate critical habitat for the Oregon spotted frogs' habitat under the Endangered Species Act.

DATES: We will accept comments received or postmarked on or before October 28, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 15, 2013.

ADDRESSES: *Written Comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R1–ES–2013–0088, which is the docket number for this rulemaking. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2013–0088; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments *only* by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the *Information Requested* section below for more information).

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/wafwo* and *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0088, and at the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the U.S. Fish and Wildlife Service Web site and Field Office set out above, and may also be included at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503, by telephone 360–753–9440 or by facsimile 360–753–9445. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), any species that is determined to be an endangered or threatened species requires that critical habitat be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can be completed only by issuing a rule. Elsewhere in today's **Federal Register**, we have proposed to list the Oregon spotted frog (*Rana pretiosa*) as a threatened species under the Act.

The basis for our action. Under the Endangered Species Act, any species that is determined to be a threatened or endangered species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

We are preparing an economic analysis of the proposed designation of critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek additional public review and comment.

In this rule we propose to designate critical habitat for this species. We are proposing to designate 68,192 acres (27,597 hectares), and approximately 24 stream miles (38 km) as critical habitat in Washington and Oregon. The proposed critical habitat areas are under ownership or management by Federal and State agencies, Counties, local municipalities, and private individuals. We are considering excluding one area in Washington and three areas in Oregon from critical habitat designation under section 4(b)(2) of the Act, based on the existence of partnerships as evidenced by conservation plans. These areas encompass 10,277 acres (4,158 hectares). All comments received will be fully considered in the Secretary's final determination regarding the potential exclusion of these areas and any other areas for which exclusion may be appropriate.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase

in threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of Oregon spotted frog habitat;

(b) What may constitute "physical or biological features essential to the conservation of the species," within the geographical range currently occupied by the Oregon spotted frog;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why;

(g) Whether there are any specific areas where the proposed critical habitat boundaries should be expanded to include adjacent riparian areas, what factors or features should be considered in determining an appropriate boundary revision, and why this would be biologically necessary or unnecessary; and

(h) Additional research studies or information regarding the movement distances or patterns of Oregon spotted frogs.

(3) Land use designations and current or planned activities in the areas proposed to be designated as critical habitat, and possible impacts of these activities on the proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Oregon spotted frog within the proposed critical habitat areas.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular; any impacts on small entities or families, and the benefits of including or excluding areas from the proposed designation that exhibit these impacts.

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(7) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether the areas being considered for exclusion under section 4(b)(2) of the Act in this proposed rule should be excluded, and whether the benefits of excluding these areas would outweigh the benefits of including them in the designation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Please see the proposed listing rule published in today's **Federal Register** for a complete history of previous Federal actions.

In a settlement agreement with plaintiff WildEarth Guardians on May 10, 2011, the Service submitted a workplan to the U.S. District Court for the District of Columbia in *re Endangered Species Act Section 4 Deadline Litigation*, No. 10–377 (EGS), MDL Docket No. 2165 (D. DC May 10, 2011), and obtained the court's approval to systematically, over a period of 6 years, review and address the needs of more than 250 candidate species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. The Oregon spotted frog is 1 of 251 candidate species identified in the May 2011 workplan. Accordingly, a proposed rule to list the Oregon spotted frog as a threatened species under the Act is published in today's **Federal Register**.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Oregon spotted frog in this section of the proposed rule. For more information on Oregon spotted frog species description, taxonomy, life history, habitat and distribution descriptions, refer to the proposed rule to list the Oregon spotted frog as a threatened species under the Act published in today's **Federal Register**.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided

pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species, and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) such designation of critical habitat would not be beneficial to the species.

Currently no imminent threat of take is attributed to collection or vandalism to the Oregon spotted frog, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if critical habitat designation would result in any benefits, then a prudent finding is warranted. Here, the potential

benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Oregon spotted frog.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act, we must find whether critical habitat for the Oregon spotted frog is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(2) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Oregon spotted frog.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species, and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

We derive the specific physical or biological features required for the Oregon spotted frog from studies of this species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential for the Oregon spotted frog:

Space for Individual and Population Growth and for Normal Behavior

The Oregon spotted frog is the most aquatic native frog species in the Pacific Northwest. It is almost always found in or near a perennial body of water, such as a spring, pond, lake, sluggish stream, irrigation canal, or roadside ditch. For completion of their life cycle, Oregon spotted frogs require shallow, stable water areas for egg and tadpole survival and development; perennial, deep, moderately vegetated pools for adult and juvenile survival in the dry season; and perennial water overlying emergent vegetation for protecting all age classes during cold wet weather (Watson *et al.* 2003, p. 298; Pearl and Hayes 2004, p. 18). This scenario essentially equates to "an expansive meadow/wetland with a continuum of vegetation densities along edges and in pools and an absence of introduced predators" (Watson *et al.* 2003, p. 298).

Oregon spotted frogs exhibit fidelity to seasonal pools throughout all seasons (breeding, dry, and wet) (Watson *et al.* 2003, p. 295), and these seasonal pools need to be connected by water, at least through the spring and again in the fall, for frogs to access them. Subadult and adult frogs may be able to make short terrestrial movements, but wetted movement corridors are preferred. A wetted movement corridor with a gradual topographic gradient (less than or equal to three percent) is necessary to enable tadpole movement out of shallow egg-laying sites into deeper, more permanent water, as water levels recede during the dry season (Watson *et al.* 2003, p. 298; Pearl and Hayes 2004, p. 20). Impediments to movement may include, but are not limited to, hard barriers such as dams and inhospitable habitat, such as lakes or rivers/creeks without refugia from predators.

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide space for their individual and population growth and for normal behavior: (1) Perennial bodies of water (such as, but not limited to springs, ponds, lakes, and sluggish streams) or other water bodies that retain water year round (such as irrigation canals or roadside ditches) with a continuum of vegetation densities along edges; (2) a gradual topographic gradient that enables movement out of shallow oviposition (egg-laying) sites into deeper, more permanent water; and, (3) barrier-free movement corridors.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The ecosystems utilized by Oregon spotted frogs have inherent community dynamics that sustain the food web. Habitats, therefore, must maintain sufficient water quality to sustain all life stages, as well as acceptable ranges for maintaining the underlying ecological community. These key physical parameters include pH, temperature, nutrients, and uncontaminated water.

For tadpoles and frogs living in productive wetland habitats, food is not usually a limiting factor. Post-metamorphic Oregon spotted frogs are opportunistic predators feeding on live animals found in or near water (important prey species information is provided in the life history section of the listing document). Tadpoles are grazers, having rough tooth rows for scraping plant surfaces and ingesting plant tissue and bacteria, algae, detritus, and probably carrion (Licht 1974, p. 624; McAllister and Leonard 1997, p. 13). Competitors for food resources include nonnative fish species, bullfrogs, and green frogs.

Pearl and Hayes (2004, pp. 8–9) posit that Oregon spotted frogs are limited by both latitude and elevation to areas that provide warm-water marsh conditions (summer shallow water exceeding 20 degrees Celsius (C) (68 degrees Fahrenheit (F)) based on the observed temperatures and slow developmental rates in egg stages (compared to other pond-breeding ranid frogs) and increased surface activity in adult frogs as water temperatures exceed 20 degrees C (68 degrees F) and when the differentiation between surface and subsurface is greater than 3 degrees C (37 degrees F) (Watson *et al.* 2003, p. 299). Warmer water is important for embryonic development and plant food

production for larval rearing (Watson *et al.* 2003, p. 299) and to allow subadults and adults to bask.

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide for their nutritional and physiological requirements: (1) Sufficient quality of water to support habitat used by Oregon spotted frogs (including providing for a sufficient prey base); (2) absence of competition from introduced fish and bullfrogs; and (3) shallow (warmer) water.

Cover or Shelter

During the dry season, Oregon spotted frogs move to deeper, permanent pools or creeks and show a preference for areas with greater than 50 percent surface water and/or less than 50 percent vegetation closure (Watson *et al.* 2003, pp. 295, 297), avoiding dense stands of grasses with greater than 75 percent closure. They are often observed near the water surface basking and feeding in beds of floating and shallow subsurface vegetation (Watson *et al.* 2003, pp. 291–298; Pearl *et al.* 2005a, pp. 36–37) that appears to allow them to effectively use ambush behaviors in habitats with high prey availability, and the off-shore vegetation mats offer basking habitat that is less accessible to some terrestrial predators (Pearl et al 2005a, p. 37). Proximity to escape cover such as aggregated organic substrates also may be particularly important for Oregon spotted frogs to successfully evade avian, terrestrial, and amphibian predators (Licht 1986b, p. 241; Hallock and Pearson 2001, pp. 14–15; Pearl & Hayes 2004, p. 26).

Oregon spotted frogs, which are palatable to fish and bullfrogs, did not evolve with introduced species and, in some areas, such as high-elevation lakes, did not evolve with native fish. Therefore, Oregon spotted frogs may not have the mechanisms to avoid the predatory fish that prey on the tadpoles. The warm-water microhabitat requirement of the Oregon spotted frog, unique among native ranids of the Pacific Northwest, exposes it to a number of introduced fish species (Hayes 1994, p. 25), the most common being brook trout (*Salvelinus fontinalis*). During drought years, as dropping water levels reduce wetland refuges, Oregon spotted frog larvae become concentrated and are exposed to brook trout predation (Hayes *et al.* 1997, p. 5; Hayes 1998a, p. 15), resulting in lower Oregon spotted frog recruitment (Pearl 1999, p. 18). Demographic data suggest introduced fish have a negative effect on Oregon spotted frogs because sites with significant numbers of brook trout and/or fathead minnow have a disproportionate ratio of older spotted frogs to juvenile frogs (i.e., poor recruitment) (Hayes 1997, pp. 42–43). Overwintering locations of Oregon spotted frogs, where nonnative fish have limited or no access, improve the winter survival rates of males and females (Chelgren *et al.* 2008, p. 749), and the associated breeding areas have a significantly higher (0.89 times) number of egg masses (Pearl *et al.* 2009a, p. 142). In addition, nonnative fish (in particular wide-gape fish like bluegill sunfish) may be facilitating the distribution and abundance of bullfrogs by preying upon macroinvertebrates that would otherwise consume bullfrog tadpoles (Adams *et al.* 2003, p. 349).

Bullfrogs share similar habitat and temperature requirements with the Oregon spotted frog, but adult bullfrogs achieve larger body size than native western ranids and even juvenile bullfrogs can consume post-metamorphic native frogs (Hayes and Jennings 1986, p. 492; Pearl *et al.* 2004, p. 16). In addition, bullfrog larvae can outcompete or displace native larvae from their habitat or optimal conditions by harassing native larvae at feeding stations or inhibiting native larvae feeding patterns (Kupferberg 1997, pp. 1741–1746, Kiesecker and Blaustein 1998, pp. 783–784, Kiesecker *et al.* 2001b, pp. 1966–1967). Therefore, Oregon spotted frogs require areas that are sheltered from competition with, or predation by, bullfrogs.

Within the current range of the Oregon spotted frog are two different winter regimes. In British Columbia and Washington, the Puget Trough climate is maritime with mild summer and winter temperatures. Subfreezing conditions occur only for short periods in November through March, but ice rarely persists for more than a week. The Cascades winter conditions are cold enough to produce ice-capped water bodies from December to February, and temperatures regularly extend below freezing between mid-October and early April. Known overwintering sites are associated with flowing systems, such as springs and creeks, that provide well-oxygenated water (Hallock and Pearson 2001, p. 15; Hayes *et al.* 2001, pp. 20–23; Tattersall and Ultsch 2008, pp. 123, 129, 136) and sheltering locations protected from predators and freezing (Risenhoover *et al.* 2001b, pp. 13–26; Watson *et al.* 2003, p. 295; Pearl and Hayes 2004, pp. 32–33). Oregon spotted frogs may burrow in mud, silty substrate, or clumps of emergent vegetation during periods of prolonged or severe cold (Watson *et al.* 2003, p. 295; McAllister and Leonard 1997, p. 17) but may remain active throughout most of the winter (Hallock and Pearson 2001, p. 17). Therefore, overwintering habitat needs to retain water during the winter (October through March or early April), and, to facilitate movement, these areas need to be hydrologically connected via surface water to breeding and rearing habitat.

In the areas of the range where water bodies become capped by ice and snow for several weeks during the winter, hypoxic water conditions can occur due to cessation of photosynthesis combined with oxygen consumption by decomposers (Wetzel 1983, pp. 162–170). While lethal oxygen levels for Oregon spotted frogs have not been evaluated, other ranid species have been found to use overwintering microhabitat with well-oxygenated waters (Ultsch *et al.* 2000, p. 315; Lamoureux and Madison 1999, p. 434), and most fish cannot tolerate levels below 2.0 mg/L (Wetzel 1983, p. 170). However, some evidence indicates that Oregon spotted frogs can tolerate levels at or somewhat below 2.0 mg/L and do not purposefully avoid areas with low oxygen levels, at least for short periods (Hayes *et al.* 2001, pp. 20–22; Risenhoover *et al.* 2001b, pp. 17–18).

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide for their cover and shelter requirements: (1) Permanent fresh water bodies, including natural and manmade, that have greater than 50 percent surface water with floating and shallow subsurface vegetation during the summer and that are hydrologically connected via surface water to breeding and rearing habitat; (2) permanent fresh water bodies, including natural and manmade, that hold water from October to March and are hydrologically connected via surface water to breeding and rearing habitat; (3) physical cover from avian and terrestrial predators, and lack of predation by introduced fish and bullfrogs; and (4) refuge from lethal overwintering conditions (freezing and anoxia).

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Oregon spotted frog breeding sites are generally temporarily inundated (flooded or underwater) shallows (2–12 in (5–30 cm) deep) that are hydrologically connected to permanent waters (Licht 1971, p. 120, Hayes *et al.* 2000 entire, Pearl and Bury 2000 entire, Risenhoover *et al.* 2001a, pp. 13–15, Watson *et al.* 2003, p. 295) and include pools, gradually receding shorelines,

benches of seasonal lakes and marshes, and wet meadows. Egg-laying microhabitats are gradually sloped and relatively close to shorelines (Hayes *et al.* 2000, p. 5; Pearl and Bury 2000, p. 6; Pearl and Hayes 2004, p. 20) and are usually associated with submergent or the previous year's emergent vegetation. Characteristic vegetation includes grasses, sedges, and rushes. Vegetation coverage beneath egg masses is generally high, and Oregon spotted frog egg masses are rarely found over open soil or rock substrates (Pearl and Bury 2000, p. 6; Lewis *et al.* 2001, pp. 9–10). Full solar exposure seems to be a significant factor in breeding habitat selection and eggs are laid where the vegetation is low or sparse, such that vegetation structure does not shade the eggs (McAllister and Leonard 1997, pp. 8, 17; McAllister and White 2001, pp. 10–11; Pearl and Bury 2000, p. 6; Pearl *et al.* 2009a, pp. 141–142).

To be considered essential breeding habitat, water must be permanent enough to support breeding, tadpole development to metamorphosis (approximately 4 months), and survival of frogs. Egg-laying can begin as early as February in British Columbia and Washington and as late as April/May in the higher elevations. In addition, breeding habitat must be hydrologically connected to permanent waters. The heaviest losses to predation are thought to occur shortly after tadpoles emerge from eggs, when they are relatively exposed and poor swimmers (Licht 1974, p. 624). Significant mortality can also result when tadpoles become isolated in breeding pools away from more permanent waters (Licht 1974, p. 619; Watson *et al.* 2003, p. 298). Watson *et al.* (2000, p. 28) reported nearly total reproductive failure in 1998 when the egg-laying pools dried due to dry weather following breeding. In addition to being vulnerable to desiccation, tadpoles may succumb to low dissolved oxygen levels in isolated pools and ponds during summer (Watson *et al.* 2000, p. 28).

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide for sites for breeding reproduction, or rearing (development) of offspring: (1) Standing bodies of fresh water, including natural and manmade ponds, slow-moving streams or pools within streams, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a minimum of 4 months (from egg-laying through metamorphosis); (2) shallow (less than or equal to 12 inches (30cm)) water areas (shallow water may also occur over vegetation that is in deeper water); (3) a hydrological connection to a permanent water body; (4) gradual topographic gradient; (5) emergent wetland vegetation (or vegetation that can mimic emergent vegetation via manipulation, for example reed canarygrass that can be mowed); and (6) full solar exposure.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Dispersal habitat may consist of ephemeral (water present for only a short time), intermittent, or perennial drainages that are generally not suitable for breeding but can provide corridors that afford movement. This habitat also offers areas for the establishment of home ranges by juvenile recruits, maintenance of gene flow through the movement of juveniles and adults between populations, and recruitment into new breeding habitat or recolonization of breeding habitat after local extirpations. Detailed studies of dispersal and population dynamics of Oregon spotted frogs are limited. However, home ranges in a Washington study averaged 5.4 ac (2.2 ha), and daily movement was 16–23 feet (ft) (5–7 meters (m)) throughout the year (Watson *et al.* 2003, p. 295). Oregon spotted frogs at the Sunriver site in Oregon routinely make annual migrations of 0.31–0.81 mi (0.5–1.3 km) between the major egg-laying complex and an overwintering site (Bowerman 2006, pers. comm.). Longer travel distances, while infrequent, have been observed between years and within a single year between seasons. The maximum observed movement distance in Washington was 1.5 mi (2.4 km) between seasons along lower Dempsey Creek to the creek's mouth from the point where the frogs were marked (McAllister and Walker 2003, p. 6). In Oregon, the maximum observed movement was 1.74 mi (2.8 km) downstream (Cushman and Pearl 2007, p. 13). While these movement studies are specific to Oregon spotted frogs, the number of studies and size of the study areas are limited and studies have not been conducted over multiple seasons or years. In addition, the ability to detect frogs is challenging because of the difficult terrain in light of the need for the receiver and transmitter to be in close proximity. Hammerson (2005) recommends that a 3.1-mile (5-km) separation distance for suitable habitat be applied to all ranid frog species because the movement data for ranids are consistent and the preponderance of data indicates that a separation distance of several kilometers may be appropriate and practical for delineation of occupancy, despite occasional movements that are longer or that may allow some genetic interchange between distant populations (for example, the 10-km (6.2-mi) distance noted by Blouin *et al.* 2010, pp. 2186, 2188). Therefore, for the purposes of evaluating the connectedness of Oregon spotted frog breeding areas and individual frogs' ability to move between areas of suitable habitat, we will assume a maximum movement distance of 3.1 mi (5 km). In addition, these aquatic movement corridors should be free of impediments to movement, including but not limited to hard barriers such as dams and biological barriers such as abundant predators.

Maintenance of populations across a diversity of ecological landscapes is necessary to provide sufficient protection against changing environmental circumstances (such as climate change). This diversity of habitat areas provides functional redundancy to safeguard against stochastic events (such as droughts) and may also be necessary as different regions or microclimates respond to changing climate conditions. Establishing or maintaining populations across a broad geographic area spreads out the risk to individual populations across the range of the species, thereby conferring species resilience. Finally, protecting a wide range of habitats across the occupied range of the species simultaneously maintains genetic diversity of the species, which protects the underlying integrity of the major genetic groups (Blouin *et al.* 2010, pp. 2184–2185) whose persistence is important to the ecological fitness of the species as a whole (Blouin *et al.* 2010, p. 2190).

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide habitats protected from disturbance and representative of the historical, geographic, and ecological distribution: (1) Wetted corridors within 3.1 mi (5 km) of breeding habitat that are free of barriers to movement, and (2) a diversity of high-quality habitats across multiple sub-basins throughout the geographic extent of the species' range sufficiently representing the major genetic groups.

Primary Constituent Elements for Oregon Spotted Frog

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Oregon spotted frog in areas occupied at

the time of listing, focusing on the features' primary constituent elements (PCEs). Primary constituent elements are those specific elements of the physical or biological features (PBFs) that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Oregon spotted frog are:

(1) Primary constituent element 1—Nonbreeding (N), Breeding (B), Rearing (R), and Overwintering Habitat (O). Ephemeral or permanent bodies of fresh water, including, but not limited to natural or manmade ponds, springs, lakes, slow-moving streams, or pools within or oxbows adjacent to streams, canals, and ditches, that have one or more of the following characteristics:

- Inundated for a minimum of 4 months per year (B, R) (timing varies by elevation but may begin as early as February and last as long as September);
- Inundated from October through March (O);
- If ephemeral, areas are hydrologically connected by surface water flow to a permanent water body (e.g., pools, springs, ponds, lakes, streams, canals, or ditches) (B, R);
- Shallow water areas (less than or equal to 30 centimeters (12 inches), or water of this depth over vegetation in deeper water (B, R);
- Total surface area with less than 50 percent vegetative cover (N);
- Gradual topographic gradient (less than 3 percent slope) from shallow water toward deeper, permanent water (B, R);
- Herbaceous wetland vegetation (i.e., emergent, submergent, and floating-leaved aquatic plants), or vegetation that can structurally mimic emergent wetland vegetation through manipulation (B, R);
- Shallow water areas with high solar exposure or low (short) canopy cover (B, R);
- An absence or low density of nonnative predators (B, R, N)

(2) Primary constituent element 2—Aquatic movement corridors. Ephemeral or permanent bodies of fresh water that have one or more of the following characteristics:

- Less than or equal to 5 kilometers (3.1 miles) linear distance from breeding areas;
- Impediment free (including, but not limited to, hard barriers such as dams, biological barriers such as abundant predators, or lack of refugia from predators).

(3) Primary constituent element 3—Refugia habitat. Nonbreeding, breeding, rearing, or overwintering habitat or aquatic movement corridors with habitat characteristics (e.g., dense vegetation and/or an abundance of woody debris) that provide refugia from predators (e.g., nonnative fish or bullfrogs).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features essential to the conservation of the species and which may require special management considerations or protection. Here we describe the type of special management considerations or protections that may be required for the physical or biological features identified as essential for the Oregon spotted frog. The specific critical habitat units and subunits where these management considerations or protections apply for each species are identified in Unit Descriptions.

A detailed discussion of activities influencing the Oregon spotted frog and their habitat can be found in the proposed listing rule. Threats to the physical or biological features that are essential to the conservation of this species and that may warrant special management considerations or protection include, but are not limited to: (1) Habitat modifications brought on by nonnative plant invasions or native vegetation encroachment (trees and shrubs); (2) loss of habitat from conversion to other uses; (3) hydrologic manipulation; (4) removal of beavers; (5) livestock grazing; and (6) predation by invasive fish and bullfrogs. These threats also have the potential to affect the PCEs if conducted within or adjacent to designated units.

The physical or biological features essential to the conservation of the Oregon spotted frog may require special management considerations or protection to ensure the provision of wetland conditions and landscape context of sufficient quantity and quality for long-term conservation and recovery of the species. Management activities that could ameliorate the threats described above include (but are not limited to) treatment or removal of exotic and encroaching vegetation (for example mowing, burning, grazing, herbicide treatment, shrub/tree removal); modifications to fish stocking and beaver removal practices in specific water bodies; nonnative predator control; stabilization of extreme water level fluctuations; restoration of habitat features; and implementation of appropriate livestock grazing practices.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—is necessary to ensure the conservation of the species. All areas currently known to be occupied by Oregon spotted frogs constitute the specific areas within the geographical area occupied by the species at the time of its proposed listing on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protections. These areas are identified as occupied in each of the unit or subunit descriptions below. We are also proposing to designate areas that are currently "not known to be occupied" that are also essential for the conservation of the species. The distinction between "occupied" and "not known to be occupied" areas is based primarily on a lack of survey data for the latter areas (i.e., these areas may be either occupied or unoccupied, but have not been surveyed because of access limitations). Our determination of the areas occupied at the time of listing and the rationale for why "not known to be occupied" areas are essential for the conservation of the species are provided below.

We used information from reports and databases prepared by Federal and State agencies and private researchers to identify the specific locations used by Oregon spotted frogs for egg-laying, rearing, nonbreeding, and overwintering. Occurrence data used for determining occupancy includes the time period between 2000 and 2012; older occurrence data were not considered to be a reliable predictor for current occupancy. In only three locations throughout the species' range is occurrence data used prior to 2005 (i.e., 2000–2004). Therefore, the majority of occupied occurrence data was collected in 2005 or later.

The presence of primary constituent elements (PCEs) are not a mandatory requirement for areas proposed for

designation as unoccupied critical habitat (i.e., the "not known to be occupied" areas in this proposed rule) (50 CFR 424.02(d)). However, the presence of PCEs was evaluated in mapping these areas, since areas having those features would have greater likelihood of providing habitat features essential to Oregon spotted frog conservation. To determine whether the currently occupied areas and the "not known to be occupied" areas contain the primary constituent elements, we plotted all occurrence records in ArcGIS, version 9 or 10 (Environmental Systems Research Institute, Inc.), a computer geographic information system program, and overlaid them on National Agriculture Imagery Program (NAIP) digital imagery, National Wetland Inventory (NWI) data, National Hydrologic Data (NHD), and slope data. Where NWI data were available and appeared to well-represent the potential habitat as seen on the NAIP imagery, the NWI data were used to approximate primary constituent elements. These areas are referred to as "wetlands" in the unit descriptions. However, in many cases the NWI features were either too expansive or not expansive enough to capture the known occurrences; in these cases, NAIP imagery, slope, and local knowledge were utilized to approximate the primary constituent elements. These areas are referred to as "seasonally wetted" in the unit descriptions. In order to capture primary constituent element 2–aquatic movement corridors, we used the NHD to map 3.1 mi (5 km) distance up and downstream from the occurrence data. NAIP imagery and local knowledge were used to refine NHD line features (for example, adjusting alignment with actual water course).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for Oregon spotted frog. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied by the Oregon spotted frog at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species. The physical or biological features relate to Oregon spotted frog nonbreeding, breeding, rearing, and overwintering habitat needs, the specifics of which are discussed in greater detail under "Primary Constituent Elements for Oregon spotted frog" above. We determined occupancy in these areas based on occurrence data as described above. These occupied areas provide the physical or biological features essential to the conservation of the species, which may require special management considerations or protection.

In addition, we are proposing to designate critical habitat within areas "not known to be occupied" at the time of listing, but that we have determined to be essential for the conservation of the species. We can designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. For areas not occupied by the species at the time of listing, we must demonstrate that these areas are essential to the conservation of the species in order to include them in our critical habitat designation. For purposes of this proposed rule and our analysis, the "not known to be occupied areas" are defined as specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. To determine if "not known to be occupied" areas met the criteria for critical habitat, we considered: (1) The importance of the area to the overall status of the species to prevent extinction and contribute to future recovery of the species; (2) whether the area presently provides the essential physical or biological features, or could be managed and restored to contain the necessary physical or biological features to support the species; and (3) whether individuals were likely to use or colonize the area. While the Act does not require that such features be present in order to designate areas as unoccupied critical habitat, these presently "not known to be occupied" areas generally provide the physical or biological features essential for the conservation of the species and may require special management considerations or protection. In general, these areas are "not known to be occupied" because they have not been surveyed. However, each of these areas are within occupied sub-basins, contain habitat features similar to known occupied areas, hydrologically connect (via surface water) occupied areas, and do not contain barriers that would inhibit Oregon spotted frog movement between occupied areas.

Within Critical Habitat Unit 1 (Lower Chilliwack River Washington), approximately 137 ac (55 ha) and 0.38 river mi (0.61 km) are being proposed as unoccupied critical habitat (i.e., "not known to be occupied"—see discussion below), and within Critical Habitat Unit 8 (Upper Deschutes River Oregon (subunit 8A)), approximately 177 ac (72 ha) fall within this category. In Critical Habitat Unit 9 (Little Deschutes River, Oregon), approximately 45 ac (18 ha), 13 ac (5 ha) within Critical Habitat Unit 12 (Williamson River Oregon), and 83 ac (33 ha) within Critical Habitat Unit 13 (Upper Klamath Lake Oregon) are within unoccupied critical habitat. In total, approximately 455 ac (184 ha), and 0.38 river mile are proposed as unoccupied critical habitat. Each of the areas proposed as unoccupied critical habitat are adjacent to known occupied sites, where a number of threats remain operative.

Although these areas are being treated as if they are unoccupied for purposes of this proposed rule, substantial uncertainty surrounds their occupancy status. There is no conclusive evidence that the Oregon spotted frog is completely absent from these areas, since: (1) Surveys have not been conducted (because of access limitations on private property or resource limitations on public lands); (2) the unoccupied reaches have appropriate habitat based on the best available information; (3) these areas are between or connected to known occupied areas; and (4) there are no barriers that would constrain upstream or downstream movement.

The species has been extirpated from up to 90 percent of its historical range, and limiting the proposed designation to the known currently occupied sites would not be adequate to ensure the conservation of the species. Including the proposed designation of unoccupied habitat is essential to ensure adequate resilience, redundancy, and representation in the wild. Resilience describes characteristics of a species

and its habitat that allow it to recover from periodic disturbance. Redundancy (having multiple populations distributed across the landscape) is 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. These terms are not independent of each other, and some characteristic of a species or area may contribute to all three.

The inclusion of unoccupied critical habitat in the proposed rule provides for the connectivity of upstream and downstream populations, facilitating gene flow and allowing for recolonization of sites that may become lost due to threats or other factors. Six of the unoccupied areas included in the proposed designation comprise river segments and their adjacent seasonally flooded areas. These areas contain some of the physical and biological features necessary to support Oregon spotted frogs and provide a corridor between known occupied areas. Two additional unoccupied areas included in the proposed designation are areas that also contain some of the physical and biological features necessary to support Oregon spotted frogs, and are adjacent to occupied areas. The designation of unoccupied critical habitat connecting known occupied areas or adjacent to known occupied sites is essential because it provides: (1) Areas for dispersal and the establishment of new breeding populations; (2) sites for future reintroduction efforts should that be part of a recovery strategy; and (3) nearby nonbreeding, breeding, rearing, and overwintering habitat opportunities should threats, natural catastrophic, or stochastic events render existing occupied sites nonfunctional. All of the unoccupied areas are within occupied sub-basins, contain habitat features similar to known occupied areas, are hydrologically connected (via surface water) occupied areas, and do not contain barriers that would inhibit Oregon spotted frog movement between occupied areas.

Areas proposed as critical habitat for the Oregon spotted frog are not representative of the entire known historical geographic distribution of the species. We are not proposing to designate critical habitat in areas where the species has been extirpated, such as in California or the Willamette Valley in Oregon. These historical areas do not meet the criteria for critical habitat since they are not essential to the conservation of the species.

We are proposing 14 units of critical habitat for designation based on sufficient elements of physical or biological features being present to support Oregon spotted frog life-history processes. These units are delineated by the sub-basins where Oregon spotted frogs remain extant. The threats are relatively consistent across each unit, with the exception of one unit where threats are significantly different (Unit 8 Upper Deschutes River). This unit is further subdivided into two subunits. Each unit contains areas occupied by Oregon spotted frogs and all of the identified elements of physical or biological features and supports multiple life-history processes. Some segments within the units contain only some elements of the physical or biological features necessary to support the Oregon spotted frog's particular use of that habitat. In addition, some segments within the units are not known to be presently occupied, but we have determined them to be essential for the conservation of the species. Therefore, we are also proposing these "not known to be occupied" areas as critical habitat for the Oregon spotted frog.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–ES–R1–2013–0088, on our Internet site *http://www.fws.gov/wafwo*, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing 14 units as critical habitat for Oregon spotted frog. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Oregon spotted frog. The 14 areas we propose as critical habitat are: (1) Lower Chilliwack River; (2) South Fork Nooksack River; (3) Samish River; (4) Black River; (5) White Salmon River; (6) Middle Klickitat River; (7) Lower Deschutes River; (8) Upper Deschutes River; (9) Little Deschutes River; (10) McKenzie River; (11) Middle Fork Willamette River; (12) Williamson River; (13) Upper Klamath Lake; and (14) Upper Klamath. All units contain areas occupied by Oregon spotted frogs. However, as previously discussed, some units also contain areas "not known to be occupied" by Oregon spotted frogs; more details about these areas are included within each individual critical habitat unit description below. The approximate area and river mileage of each proposed critical habitat unit and its relevant subunits, as well as landownership within each unit, are shown in Tables 1 and 2. Unlike Washington, no river miles alone were proposed for designation in Oregon as these areas were included within the area of the larger Unit designation. River miles alone were applied only where we were unable to delineate a polygon to encompass the PBF, such as in incised channels or developed areas. Otherwise, all of the river miles are encompassed in the acreage totals.

TABLE 1—APPROXIMATE AREA AND LANDOWNERSHIP IN PROPOSED CRITICAL HABITAT UNITS FOR THE OREGON SPOTTED FROG

Critical habitat unit	Federal Ac (Ha)	State Ac (Ha)	County Ac (Ha)	Private/Local municipalities Ac (Ha)	Total
Washington:					
1. Lower Chilliwack River	0	0	13 (5)	267 (108)	280 (113)
2. South Fork Nooksack River	0	0	0	111 (45)	111 (45)
3. Samish River	0	1 (<1)	1 (<1)	982 (398)	984 (398)
4. Black River	877 (355)	375 (151)	151 (61)	3,478 (1,408)	4,881 (1,975)
5. White Salmon River	108 (44)	1,084 (439)	0	33 (13)	1,225 (496)
6. Middle Klickitat River	4,048 (1,638)	0	2 (1)	2,796 (1132)	6,846 (2,770)
Oregon:					
7. Lower Deschutes River	63 (25)	0	0	6 (2.5)	69 (28)

TABLE 1—APPROXIMATE AREA AND LANDOWNERSHIP IN PROPOSED CRITICAL HABITAT UNITS FOR THE OREGON SPOTTED FROG—Continued

Critical habitat unit	Federal Ac (Ha)	State Ac (Ha)	County Ac (Ha)	Private/Local municipalities Ac (Ha)	Total
8. Upper Deschutes River	23,211 (9,393)	180 (73)	45 (18)	962 (389)	24,398 (9,873)
8A. Upper Deschutes River, Below Wickiup Dam	1,180 (477)	180 (73)	45 (18)	961 (389)	2,366 (958)
8B. Upper Deschutes River, Above Wickiup Dam	22,031 (8,916)	0	0	<1	22,031 (8,916)
9. Little Deschutes River	5,275 (2,135)	216 (87)	81 (33)	5,789 (2,343)	11,361 (4,598)
10. McKenzie River	98 (40)	0	0	0	98 (40)
11. Middle Fork Willamette River	292 (118)	0	0	0	292 (118)
12. Williamson River	10,335 (4,182)	0	0	4,817 (1,949)	15,152 (6,132)
13. Upper Klamath Lake	1,243 (503)	6 (3)	0	1,002 (405)	2,251 (911)
14. Upper Klamath	85 (34)	0	0	160 (65)	245 (99)
Total	45,635 (18, 647)	1,862 (753)	293 (118)	20,402 (8,258)	68,192 (27,597)

Note: Area sizes may not sum due to rounding. Area estimates reflect all land and stream miles within critical habitat unit boundaries, except those stream miles included in Table 2.

TABLE 2—APPROXIMATE RIVER MILEAGE AND OWNERSHIP WITHIN PROPOSED CRITICAL HABITAT UNITS FOR THE OREGON SPOTTED FROG

Ownership *	Federal river mile (km)	Federal/Private river mile (km)	State river mile (km)	State/Private river mile (km)	County river mile (km)	County/Private river mile (km)	Private/Local municipalities river mile (km)	Total
1. Lower Chilliwack River	0	0	0	0	0	0	7.63 (12.28)	7.63 (12.28)
2. South Fork Nooksack River	0	0	0	0	0	0	3.56 (5.73)	3.56 (5.73)
3. Samish River	0	0	0	0	0	0	1.73 (2.78)	1.73 (2.78)
4. Black River	0.06 (0.10)	0.06 (0.09)	0.45 (0.73)	0.05 (0.07)	0.64 (1.02)	0.27 (0.43)	5.90 (9.49)	7.42 (11.94)
5. White Salmon River	0.91 (1.46)	0	0	0	0	0	2.30 (3.70)	3.20 (5.15)
Total	0.97 (1.55)	0.06 (0.09)	0.5 (0.8)	0.05 (0.07)	0.63 (1.02)	0.27 (0.43)	21.12 (33.97)	23.54 (37.88)

* Ownership—multi-ownership (such as Federal/Private) indicate different ownership on each side of the river/stream/creek.
Note: River miles (km) may not sum due to rounding. Mileage estimates reflect stream miles within critical habitat unit boundaries that are not included in area estimates in Table 1.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Oregon spotted frog, below. In some cases, multiple data sources are used to inform our determinations. These multiple data sources include various unpublished reports, databases, and spreadsheets provided by our partner agencies. These sources are identified in the literature cited list, which is included as supplementary information on *http://www.regulations.gov* for this proposed rule. These sources are available upon request from the Washington Fish and Wildlife Office (see **ADDRESSES**).

Critical Habitat Unit 1: Lower Chilliwack River

The Lower Chilliwack River unit consists of 280 ac (113 ha) and 8 river miles (12 river kilometers) in Whatcom County, Washington. This unit includes the Sumas River and adjacent seasonally wetted areas from approximately the intersection with Hopewell Road downstream to the intersection with Gillies Road. This unit also includes portions of Swift Creek and an unnamed tributary just south of Swift Creek, along with their adjacent seasonally wetted areas. Oregon spotted frogs are known to currently occupy 143 ac (58 ha) and 7 river miles (11 river kilometers) in this unit (Bohannon *et al.* 2012). Currently, a 137–ac (55–ha) area and a river segment of 0.38 river miles (0.61 river kilometers) are "not known to be occupied" (see explanation of this definition above). We consider the "not known to be occupied" acres and river miles to be essential for the conservation of the species because they provide egg-laying habitat and an aquatic movement corridor for the Oregon spotted frogs in the unnamed tributary. Within this unit, currently, 13 ac (5 ha) are managed by Whatcom County, and 267 ac (108 ha) and 8 river miles (12 river kilometers) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings, and hydrologic modification of river flows. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 2: South Fork Nooksack River

The South Fork Nooksack River unit consists of 111 ac (45 ha) and 4 river miles (6 river kilometers) in Whatcom County, Washington. This unit includes the Black Slough and adjacent seasonally wetted areas from the headwaters to the confluence with South Fork Nooksack River. This unit also includes wetlands and seasonally wetted areas along Tinling Creek and the unnamed tributary to the Black Slough. Oregon spotted frogs are known to currently occupy this unit (Bohannon *et al.* 2012). The entire area within this unit is under private ownership, including one nonprofit conservation organization. All of the essential physical or biological features are found within the unit, but are impacted by

invasive plants (reed canarygrass), woody vegetation plantings and succession, and beaver removal efforts. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 3: Samish River

The Samish River unit consists of 984 ac (398 ha) and 2 river miles (3 river kilometers) in Whatcom and Skagit Counties, Washington. This unit includes the Samish River and adjacent seasonally wetted areas from the headwaters downstream to the confluence with Dry Creek. Oregon spotted frogs are known to currently occupy this unit (Bohannon *et al.* 2012). Within this unit, currently less than 1 ac (less than 1 ha) is managed by Washington Department of Natural Resources (WDNR), 1 ac (less than 1 ha) is managed by Skagit County, and 982 ac (397 ha) and 2 river miles (3 river kilometers) are privately owned, including two nonprofit conservation organizations. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings and succession, and beaver removal efforts. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 4: Black River

The Black River unit consists of 4,881 ac (1,975 ha) and 7 river miles (12 river kilometers) in Thurston County, Washington. This unit includes the Black River and adjacent seasonally wetted areas from Black Lake downstream to approximately 3 mi (5 km) south of the confluence with Mima Creek. This unit also includes six tributaries to the Black River (Dempsey Creek, Salmon Creek, Blooms Ditch, Allen Creek, Beaver Creek, and Mima Creek), one tributary to Black Lake (Fish Pond Creek), and their adjacent seasonally wetted areas. Oregon spotted frogs are known to currently occupy this unit (Hallock 2013). Within this unit, currently 877 ac (355 ha) are Federally managed by the Nisqually NWR (873 ac (353 ha)) and the Department of Energy (4 ac (2 ha)); 375 ac (151 ha) are managed by State agencies, including the Washington Department of Fish and Wildlife and Department of Natural Resources; 151 ac (61 ha) are City or County managed; and 3,478 ac (1,408 ha) are privately owned, including two nonprofit conservation organizations. Within this unit, currently 6 river miles (10 river kilometers) are privately owned; less than 1 river mile (less than 1 river kilometer) is dually managed/owned (i.e., different owners on opposite sides of the river); and less than 1 river mile (less than 1 river kilometer) is managed by each of the following: Nisqually NWR, State agencies, and Thurston County. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings and succession, and beaver removal efforts. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 5: White Salmon River

The White Salmon River unit consists of 1,225 ac (496 ha) and 3 river miles (5 river kilometers) in Skamania and Klickitat Counties, Washington. This unit includes the Trout Lake Creek from the confluence with Little Goose Creek downstream to the confluence with White Salmon River, Trout Lake, and the adjacent seasonally-wetted areas. Oregon spotted frogs are known to currently occupy this unit (Hallock 2011 and Hallock 2012). Within this unit, currently 108 ac (44 ha) and 1 river mile (2 river kilometers) are managed by the U.S. Forest Service (USFS), 1,084 ac (439 ha) are managed by Washington Department of Natural Resources as the Trout Lake NAP, and 33 ac (13 ha) and 2 river miles (4 river kilometers) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants and nonnative predaceous fish. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features. The Trout Lake NAP (WDNR) has a draft Management Plan that is used for management on WDNR lands in this unit and we are considering exclusion of these lands under section 4(b)(2) of the Act (see Exclusions, below).

Critical Habitat Unit 6: Middle Klickitat River

The Middle Klickitat River unit consists of 6,846 ac (2,770 ha) in Klickitat County, Washington. This unit encompasses Conboy Lake, Camas Prairie, and all water bodies therein, and extends to the northeast along Outlet Creek to Mill Pond. The southwestern edge is approximately Laurel Road, the southern edge is approximately BZ Glenwood Highway, and the northern edge follows the edge of Camas Prairie to approximately Willard Spring. Oregon spotted frogs are known to currently occupy this unit (Hayes and Hicks 2011). Within this unit, currently 4,048 ac (1,638 ha) are managed by the Conboy Lake National Wildlife Refuge; 2 ac (1 ha) are managed by Klickitat County, and 2,796 ac (1,132 ha) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by water management, exotic plant invasion, native tree encroachment, and nonnative predaceous fish and bullfrogs. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 7: Lower Deschutes River

The Lower Deschutes River unit consists of 69 acres (28 ha) in Wasco County, Oregon. This Unit includes Camas Prairie and Camas Creek, a tributary to the White River and is located on the Mt. Hood National Forest. Oregon spotted frogs are known to currently occupy this unit (C. Corkran, pers. comm. 2012). Within this unit, 63 ac (25 ha) are managed by the USFS Mt. Hood National Forest, and 6 ac (2.5 ha) are privately owned. All of the essential physical or biological features are found within the unit but are impacted by vegetation succession (conifer encroachment). The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic

movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 8: Upper Deschutes River

The Upper Deschutes River unit includes 24,398 ac (9,873 ha) in Deschutes County, Oregon, in the Upper Deschutes River sub-basin. The Upper Deschutes River unit extends from headwater streams and wetlands draining to Crane Prairie and Wickiup Reservoirs to the Deschutes River downstream to Bend, Oregon. This unit also includes Odell Creek and Davis Lake. Within this unit, currently 23,210 ac (9,393 ha) are managed by the USFS Deschutes National Forest, 180 ac (73 ha) are managed by Oregon Parks and Recreation Department, 45 ac (18 ha) are owned by the county, and 962 ac (389 ha) are privately owned. The Upper Deschutes River unit consists of two subunits: Below Wickiup Dam (Subunit 8A) and Above Wickiup Dam (Subunit 8B). Oregon spotted frogs are known to currently occupy 24,221 ac (9,801 ha) in unit 8 (USGS, Bowerman, and USFS multiple data sources). Within subunit 8A, 177 ac (72 ha) are "not known to be occupied," but are essential to the conservation of the species for the reasons identified in the subunit description below. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features. Within this unit, we are considering exclusion of lands that may be managed under a Sunriver Candidate Conservation Agreement with Assurances (CCAA), the Old Mill Pond Oregon spotted frog CCAA, and the Deschutes Basin Habitat Conservation Plan under section 4(b)(2) of the Act (see Exclusions, below).

Subunit 8A: Below Wickiup Dam

This subunit includes 2,366 ac (958 ha). This subunit consists of the Deschutes River and associated wetlands downstream of Wickiup Dam to Bend, Oregon, beginning at the outlet of an unnamed tributary draining Dilman Meadow. Currently, two areas totaling 177 ac (72 ha) are "not known to be occupied". We consider the "not known to be occupied" acres to be essential for recovery of the species because they provide aquatic movement corridors between the few remaining populations below Wickiup Dam (e.g., Dilman Meadow and frog populations downstream along the Deschutes River). Within this subunit, currently 1,180 ac (477 ha) are managed by the USFS Deschutes National Forest, 180 ac (73 ha) are managed by Oregon Parks and Recreation Department, 45 ac (18 ha) are managed by Deschutes County, and 962 ac (389 ha) are privately owned. All of the essential physical or biological features are found within the subunit but are impacted by hydrologic modification of river flows, reed canarygrass, predaceous fish, and bullfrogs. The essential features within occupied habitat within this subunit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Subunit 8B: Above Wickiup Dam

This subunit includes 22,031 ac (8,916 ha). This subunit includes the following lakes, including associated wetlands, in the upper watersheds that flow into the Crane Prairie/Wickiup Reservoir system: Hosmer Lake, Lava Lake, Little Lava Lake, Winopee Lake, Muskrat Lake, and Little Cultus Lake, Crane Prairie, Wickiup Reservoirs, and Davis Lake. Deep water areas (i.e., greater than 20 ft (6 m) without floating or submerged aquatic vegetation are not included as critical habitat within these waterbodies because they do not contain the primary constituent elements of critical habitat for Oregon spotted frog. The following riverine waterbodies and associated wetlands are critical habitat: Deschutes River from Lava Lake to Wickiup Reservoir, Cultus Creek downstream of Cultus Lake, Deer Creek downstream of Little Cultus Lake, and Odell Creek from an occupied unnamed tributary to the outlet in Davis Lake. The land within this subunit is primarily under USFS ownership. Oregon spotted frogs are known to currently occupy this subunit (USGS 2006 and 2012 datasets; USFS 2012 dataset). Within this subunit, currently 22,031 ac (8,916 ha) are managed by the USFS Deschutes National Forest and less than one acre (0.14 ha) is in private ownership. All of the essential physical or biological features are found within the subunit but are impacted by vegetation succession and nonnative predaceous fish. The essential features within this subunit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 9: Little Deschutes River

The Little Deschutes River unit consists of 11,361 ac (4,598 ha) in Klamath and Deschutes Counties, Oregon. The Little Deschutes River unit includes the extent of the Little Deschutes River and associated wetlands from the headwaters to the confluence with the Deschutes River, 1 mile (1.6 km) south of Sunriver and approximately 20 miles (32.2 km) south of Bend, Oregon. This unit includes the following tributaries, including adjacent wetlands: Big Marsh Creek, Crescent Creek, and Long Prairie Creek. Oregon spotted frogs are known to currently occupy 11,316 ac (4,490 ha) in this unit (USGS, Bowerman, and USFS multiple data sources). Currently, one 45–ac (18–ha) area is "not known to be occupied." We consider the "not known to be occupied" acres to be essential for the conservation of the species because they provide an aquatic movement corridor between populations along the Little Deschutes River. Within this unit, currently 5,275 ac (2,135 ha) are managed by the USFS Deschutes National Forest and Prineville BLM, 216 ac (87 ha) are managed by the State of Oregon, 81 ac (33 ha) are managed by Deschutes and Klamath Counties, and 5,789 ac (2,343 ha) are privately owned. Additionally, the essential physical or biological features are found within the unit but are impacted by hydrologic manipulation of water levels for irrigation, nonnative predaceous fish, reed canarygrass, and bullfrogs. The essential features within occupied areas within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features. Within this unit, we are considering exclusion of lands that may be managed under the Deschutes Basin Habitat Conservation Plan under section 4(b)(2) of the Act (see Exclusions, below).

Critical Habitat Unit 10: McKenzie River Sub-Basin

The McKenzie River unit consists of 98 ac (40 ha) in Lane County, Oregon. This critical habitat unit occurs in the Mink Lake Basin, located in the headwaters of the main South Fork of the McKenzie River on the McKenzie River Ranger District of the Willamette

National Forest. The McKenzie River unit includes seven wilderness lakes, marshes, and ponds: Penn Lake, Corner Lake, Boat Lake, Cabin Meadows, two unnamed marshes and a pond northeast of Penn Lake. A small segment of the South Fork McKenzie River between the two unnamed marshes also is included within this critical habitat unit. The entire area within this unit is under USFS ownership. Oregon spotted frogs are known to currently occupy this unit (Adams *et al.* 2011). All of the essential physical or biological features are found within the unit, but are impacted by nonnative predaceous fish, isolation, and vegetation encroachment. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 11: Middle Fork Willamette River

The Middle Fork Willamette River unit consists of 292 ac (118 ha) in Lane County, Oregon. This unit includes Gold Lake and bog, which are located in the 465–acre (188–ha) Gold Lake Bog Research Natural Area on the upstream end of Gold Lake on the Willamette National Forest. The entire area within this unit is under USFS ownership. Oregon spotted frogs are known to currently occupy this unit (USDA Forest Service 2011). All of the essential physical or biological features are found within the unit, but are impacted by nonnative predaceous fish, isolation, and vegetation encroachment. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 12: Williamson River

The Williamson River unit consists of 15,152 ac (6,132 ha) in Klamath County, Oregon. This unit includes the Williamson River and adjacent seasonally wetted areas in Klamath Marsh National Wildlife Refuge (NWR) 4.89 mi (7.87 km) east of Silver Lake Highway, north to 0.998 mi (1.61 km) southeast of Big Springs, north through the Refuge to 0.24 mi (0.36 km) southeast of Three Creek spring, and upstream to 2.14 mi (3.44 km) north of the confluence with Aspen Creek. This unit also includes a portion of one tributary to the Williamson River (Jack Creek) and its adjacent seasonally wetted areas from National Forest Road 94 to 0.132 mi (0.212 km) south of National Forest Road 88. Oregon spotted frogs are known to currently occupy 15,139 ac (6,127 ha) in this unit (USGS, USFS, and USFWS multiple data sources). Currently, one 13-ac (5-ha) area is "not known to be occupied." We consider the "not known to be occupied" acres to be essential for the conservation of the species because they provide an aquatic movement corridor between Oregon spotted frogs in the Klamath Marsh NWR to frogs in the Upper Williamson River. Within this unit, 10,335 ac (4,182 ha) are federally managed by the Klamath Marsh National Wildlife Refuge and the USFS Fremont-Winema National Forest, and 4,817 ac (1,949 ha) are privately owned. Additionally, the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation succession, absence of beaver, and nonnative predators. The essential features within occupied areas within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 13: Upper Klamath Lake

The Upper Klamath Lake unit consists of 2,251 ac (911 ha) in Klamath County, Oregon. This unit includes the Wood River and its adjacent seasonally wetted areas from its headwaters downstream to the Bureau of Land Management (BLM) south levee road just north of the confluence with Agency Lake as well as the complete length of the Wood River Canal (west of the Wood River) and its adjacent seasonally-wetted areas starting 1.80 mi (2.90 km) south of Weed Road and continuing south. This unit also includes one tributary to the Wood River (Fort Creek) and its adjacent seasonally wetted areas. In addition, this unit includes three creeks (Sevenmile, Crane, and Fourmile) that flow into Sevenmile Canal and then into Agency Lake and their adjacent seasonally wetted areas.

Sevenmile Creek includes 1.40 mi (2.25 km) beginning north of Nicholson Road, south to the confluence of Crane Creek as well as two tributaries (Blue Spring and Short Creek) and the associated, adjacent seasonally wetted areas. Crane Creek includes adjacent seasonally wetted areas 0.28 mi (0.44 km) from its headwaters south to the confluence with Sevenmile Creek as well as two tributaries (Mares Egg spring and a portion of an unnamed spring to the west of Crane Creek 0.16 mi (0.30 km) south of three unnamed springs near Sevenmile Road). Fourmile Creek includes the adjacent seasonally wetted areas associated with the historical Crane Creek channel, Threemile Creek, Cherry Creek, Jack springs, Fourmile springs, the confluence of Nannie Creek, and the north-south canals that connect Fourmile Creek to Crane Creek.

Oregon spotted frogs are known to currently occupy 2,168 ac (877 ha) in this unit (BLM, USFS, USGS, and USFWS multiple data sources). Currently, two areas totaling 83 ac (33 ha) are "not known to be occupied." We consider the "not known to be occupied acres" to be essential for the conservation of the species because they contain some of the physical and biological features necessary to support Oregon spotted frogs and are adjacent to areas known to be occupied by Oregon spotted frogs (Fort Creek to the Wood River). In addition, they provide an aquatic movement corridor between Oregon spotted frogs in Sevenmile Creek to frogs in Crane Creek and its associated tributaries.

Within this unit, 1,243 ac (503 ha) are managed by the BLM and Fremont-Winema National Forest, 6 ac (3 ha) are managed by Oregon State Parks, and 1,002 ac (405 ha) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings and succession, hydrological changes, and nonnative predators. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Critical Habitat Unit 14: Upper Klamath

The Upper Klamath unit consists of 245 ac (99 ha) of lakes and creeks in Klamath and Jackson Counties, Oregon. In Klamath County, Buck Lake critical habitat includes seasonally wetted areas adjacent to the western edge of Buck Lake encompassing Spencer Creek, three unnamed springs, and Tunnel Creek. Parsnip Lakes, in Jackson County, includes seasonally wetted

areas associated with Keene Creek from the Keene Creek dam to 0.55 mi (0.88 km) east from the confluence of Mill Creek as well as four lakes associated with the creek. Oregon spotted frogs are known to currently occupy this unit (BLM, USFS, USGS, and USFWS multiple data sources). Within this unit, 85 ac (34 ha) are managed by the BLM and Fremont-Winema National Forest, and 160 ac (65 ha) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by woody vegetation succession, nonnative predators, lack of beaver, and hydrological changes. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat; aquatic movement corridors; or refugia habitat, and to address any changes that could affect these features.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for Oregon spotted frog. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Oregon spotted frog, including Federal actions that occur outside of critical habitat that impact physical or biological features within critical habitat. The regulations at 50 CFR 402.02 define the "action area" as all areas to be affected directly or indirectly by the Federal action, and not merely the immediate area involved in the action. These activities include, but are not limited to:

(1) Actions that would significantly alter the structure and function of the wetland, pond, channel, lake, oxbow, spring, or seasonally flooded areas morphology, geometry, or water availability/permanence. Such actions or activities could include, but are not limited to:

(1) Filling or excavation; channelization; impoundment;
(2) road and bridge construction; urban, agricultural, or recreational development;
(3) mining;
(4) groundwater pumping;
(5) dredging;
(6) construction or destruction of dams or impoundments;
(7) water diversion;
(8) water withdrawal;
(9) hydropower generation;
(10) livestock grazing;
(11) beaver removal;
(12) destruction of riparian or wetland vegetation;
(13) pond construction; and
(14) river restoration, including channel reconstruction, placement of large woody debris, vegetation planting, reconnecting riverine floodplain, or gravel placement.

These activities may lead to changes in the hydrologic function of the aquatic habitat and alter the timing, duration, water flows, and water depth. These changes may be designed to be beneficial to the Oregon spotted frog and actually increase habitat in the long term or may degrade or eliminate Oregon spotted frog habitat and could lead to the reduction in available breeding, rearing, nonbreeding, and overwintering habitat necessary for the frog to complete its life cycle. If the permanence of an aquatic system declines so that it regularly dries up, it may lose its ability to support Oregon spotted frogs. If the quantity of water declines, it may reduce the likelihood that the site will support a population of frogs that is robust enough to be viable over time. Similarly, ephemeral, intermittent, or perennial ponds can be important stop-over points for frogs moving among breeding areas or between breeding, rearing, dry season, or wintering areas. Reducing the permanence of these sites may reduce their ability to facilitate frog movements. However, in some cases, increasing permanence can be detrimental as well, if it creates favorable habitat for predatory fish or bullfrogs that otherwise could not exist in the system.

(2) Actions that would significantly alter the vegetation structure in and around habitat. Such actions or activities could include, but are not limited to, removing, cutting, burning, or planting vegetation for restoration actions, creation or maintenance of urban or recreational developments, agricultural activities, and grazing. The alteration of the vegetation structure may change the habitat characteristics by changing the microhabitat (e.g., change in temperature, water depth, basking opportunities, and cover) and thereby negatively affect whether the Oregon spotted frog is able to complete all normal behaviors and necessary life functions or may allow invasion of competitors or predators.

(3) Actions that would significantly degrade water quality (for example, alter water chemistry or temperature). Such actions or activities could include, but are not limited to, release of chemicals or biological pollutants into surface water or into connected ground water at a point source or by dispersed release (nonpoint source); livestock grazing that results in sedimentation, urine, or feces in surface water; runoff from agricultural fields; and application of pesticides (including aerial overspray). These actions could adversely affect the ability of the habitat to support survival and reproduction of Oregon spotted frogs. Variances in water chemistry or temperature could also affect the frog's ability to survive with Bd, oomycete water mold *Saprolegnia*, or *Ribeiroia*.

(4) Actions that would directly or indirectly result in introduction of nonnative predators, increase the abundance of extant predators, or introduce disease. Such actions could include, but are not limited to: Introduction or stocking of fish or bullfrogs; water diversions, canals, or other water conveyance that moves water from one place to another and through which inadvertent transport of predators into Oregon spotted frog habitat may occur; and movement of water, mud, wet equipment, or vehicles from one aquatic site to another, through which inadvertent transport of eggs, tadpoles, or pathogens may occur. These actions could adversely affect the ability of the habitat to support survival and reproduction of Oregon spotted frogs. Additionally, the stocking of introduced fishes could prevent or preclude recolonization of otherwise available breeding or overwintering habitats, which are necessary for the conservation of Oregon spotted frogs.

(5) Actions and structures that would physically block aquatic movement corridors. Such actions and structures include, but are not limited to: Urban, industrial, or agricultural development; water diversions (such as dams, canals, pipes); water bodies stocked with predatory fishes or bullfrogs; roads that do not include culverts; or other structures that physically block movement. These actions and structures could reduce or eliminate immigration and emigration within a sub-basin.

(6) Inclusion of lands in conservation agreements or easements that result in any of the actions discussed above. Such easements could include, but are not limited to NRCS Wetland Reserve Program, USDA Farm Service Agency's Conservation Reserve and Conservation Reserve Enhancement Programs, Habitat Conservation Plans, Safe Harbor Agreements, or Candidate Conservation Agreements with Assurances.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Oregon spotted frog, the benefits of critical habitat include public awareness of the species presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for Oregon spotted frogs due to the protection from adverse modification or destruction of critical habitat.

When we evaluate a conservation plan during our consideration of the benefits of exclusion, we assess a variety of factors, including but not limited to, whether the plan is finalized, how it provides for the conservation of the essential physical or biological features, whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future, whether the conservation strategies in the plan are likely to be effective, and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in the proposed critical habitat are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. We have identified potential effects to land use sectors that may be associated with the following activities: (1) Species and habitat management; (2) residential, commercial, or industrial development; (3) agriculture, including cattle grazing, dairy farms, and hay production; (4) construction of new, or maintenance of, roads and highways; (5) maintenance (including vegetation removal or alteration) of drainage ditches; (6) construction or maintenance of recreational facilities; and (7) construction or maintenance of dams or water diversion structures.

During the development of a final designation, we will consider economic impacts based on information in our economic analysis, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for Oregon spotted frog are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not intending to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that the proposed designation does not include any tribal lands. Therefore, we have not proposed designation of critical habitat for the Oregon spotted frog on tribal lands. However, we will coordinate with the tribes in nearby areas should there be any concerns or questions arising from this proposed critical habitat designation. Because we are not proposing designation of critical habitat for the Oregon spotted frog on any tribal lands, we anticipate no impact to tribal lands.

We have identified certain areas that we are considering excluding from the

final critical habitat designation for the Oregon spotted frog based on conservation partnerships. However, we solicit comments on the inclusion or exclusion of such particular areas (see "Public Comments" section). During the development of the final designation, we will consider economic and other relevant impacts, public comments, and other new information before deciding if inclusion or exclusion of these areas is warranted. As a result, additional areas, in addition to those identified below for potential exclusion in this proposed rule, may be excluded from the final critical habitat designation under section 4(b)(2) of the Act. Alternatively, we may decide not to exclude these lands based on information received during the public comment period or other information.

TABLE 3—LANDS PROPOSED OR THAT MAY BE CONSIDERED FOR EXCLUSION FROM THE FINAL RULE TO DESIGNATE CRITICAL HABITAT FOR OREGON SPOTTED FROG

Type of conservation plan	Critical habitat unit name	State	Name of agreement/entity	Acres	Hectares
Draft Management Plan	Middle Klickitat River	WA	Trout Lake NAP	1,084	439
Candidate Conservation Agreement.	Upper Deschutes River	OR	Sunriver	219	88
Candidate Conservation Agreement.	Upper Deschutes River	OR	Old Mill Pond	26	10
Habitat Conservation Plan	Upper Deschutes River Little Deschutes River.	OR	Deschutes Basin	8,948	3,621
Total Considered				10,277	4,158

Management Plans or Conservation Partnerships on Non-Federal Lands

In determining how the benefits of exclusion and the benefits of inclusion are affected by the existence of conservation plans and partnerships, we evaluate a variety of factors, which may include (but are not limited to), the plan's implementation history and demonstrated success; whether the plan is finalized; how the plan provides for the conservation of the essential habitat features for the species; whether there is a reasonable expectation of future implementation; and whether the plan contains a monitoring and adaptive management program to ensure that the conservation measures are effective in response to new information, if necessary.

Trout Lake Natural Area Preserve Draft Management Plan

We are considering excluding 1,084 ac (439 ha) of lands managed by the Washington Department of Natural Resources as the Trout Lake NAP. These lands are located in Unit 5 in Klickitat County, Washington. NAPs are established to provide the highest level of protection for excellent examples of unique or typical land features in Washington State and have three objectives: (1) To protect outstanding examples of rare or vanishing terrestrial or aquatic ecosystems, rare plant and animal species, and unique geologic features; (2) to serve as baselines against which the influences of human activities in similar, but differently managed ecosystems can be compared; and (3) to provide areas that are important to preserving natural features of scientific or educational value.

The Trout Lake NAP was proposed in 1995 to protect three natural features, one of which was the Oregon spotted frog. A draft Trout Lake NAP management plan was completed in 2001, but has not been finalized or approved. The guiding principle for managing this NAP is to permit natural ecological and physical processes to predominate, while controlling activities that directly or indirectly modify these processes. Exceptions may occur when a primary feature (e.g., Oregon spotted frog) for which the site was designated would be jeopardized without active intervention. The management goal, as it pertains to Oregon spotted frogs, is to maintain a stable or increasing population where they are found on the NAP through maintenance and restoration of habitat and key natural processes.

Over the last decade, multiple management actions within the NAP have been implemented to benefit Oregon spotted frogs, including water management and reed canarygrass treatments. Based on discussions with managers of the NAP, we expect actions that benefit Oregon spotted frogs will continue to be implemented in the future; however, funding for these actions is uncertain. We intend to work with the NAP managers to revise and finalize the draft NAP Plan for continued use on the Trout Lake NAP. If we determine prior to our final rulemaking that conservation efforts identified in the newly revised and finalized NAP Plan will provide a conservation benefit to the Oregon spotted frog, we may exclude the identified lands from the final designation of critical habitat.

Sunriver Candidate Conservation Agreement

In 2004, the Service prepared a draft Candidate Conservation Agreement with Assurances (CCAA) with the Sunriver Nature Center, Sunriver Owners Association (SROA), Sunriver Resort Limited Partnership (SRLP), Crosswater Owners Association, and Vandevert Acres to promote conservation measures for Oregon spotted frogs on private lands in the vicinity of Sunriver, Oregon. Although the agreement was not finalized due to herbicide and pesticide use on golf courses, the Sunriver Nature Center and other parties covered under the agreement have participated in monitoring for Oregon spotted frog on private golf courses and ranches. Additionally, water management practices conducted by the Sunriver Nature Center that stabilize water levels from breeding through metamorphosis have facilitated conservation and recovery of Oregon spotted frog in the Sunriver area, which hosts the largest population of Oregon spotted frogs in the Upper Deschutes River sub-basin. The Service has been discussing the development of a new CCAA that is specific to management of water levels using weirs on lands owned by SROA and SRLP. If a CCAA is completed prior to the final critical habitat rule for Oregon spotted frog that includes adequate conservation measures and implementation is assured to promote conservation of Oregon spotted frog, we will consider excluding 219 ac (89 ha) under this agreement from critical habitat if the conservation efforts will provide a conservation benefit of excluding that outweighs the benefit of including. These lands are located in Unit 8.

Old Mill Pond—Oregon Spotted Frog CCAA

In July 2012, a new population of Oregon spotted frogs was discovered in a water retention pond at The Old Mill District Shops in downtown Bend, Oregon. In October 2012, frog occupancy was confirmed in a nearby wetland adjacent to the Deschutes River on the Old Mill property. The Service has been discussing the development of a CCAA for the pond and riverine wetland with the owner of the Old Mill District property. This area is located in Unit 8. If a CCAA is completed prior to the final critical habitat rule for Oregon spotted frog that has adequate conservation measures, and its implementation is assured to promote the conservation of Oregon spotted frog, we will consider excluding 26 ac (11 ha) under this agreement from the final critical habitat designation.

Deschutes Basin Habitat Conservation Plan

The Deschutes Basin Board of Control (DBBC) and the City of Prineville are preparing the Upper Deschutes Basin Multi-species Habitat Conservation Plan (HCP). These lands are located in Units 8 and 9. The DBBC consists of seven member irrigation districts including Arnold Irrigation District, Central Oregon Irrigation District, North Unit Irrigation District, Ochoco Irrigation District, Swalley Irrigation District, Three Sisters Irrigation District, and Tumalo Irrigation District. They are preparing a Habitat Conservation Plan for 16 species that occur within the Upper Deschutes and Little Deschutes sub-basins including the Oregon spotted frog. If the conservation measures within an HCP are deemed adequate and implementation is assured to promote the conservation of Oregon spotted frog prior to the final critical habitat rule, we will consider excluding approximately 8,948 ac (3,621 ha) of lands within the Upper Deschutes and Little Deschutes sub-basin covered under the HCP from the final critical habitat designation.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the

rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis, we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will directly regulate only Federal agencies, which are not by definition small business entities. And as such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use because there are no energy supply facilities included in the areas proposed for designation and, where distribution corridors intersect the proposed critical habitat, activities in those corridors are not anticipated to adversely affect the primary constituent elements. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Indian governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Indian governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Indian governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Indian governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We have determined that this rule will not significantly or uniquely affect small governments because the designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required. Further, it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Oregon spotted frog in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require

Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for Oregon spotted frog does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Washington and Oregon. The designation of critical habitat in areas currently occupied by the Oregon spotted frog imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in areas currently occupied by the Oregon spotted frog may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the Oregon spotted frog within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).]

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands that were occupied by the Oregon spotted frog at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by the Oregon spotted frog that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Oregon spotted frog on tribal lands.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Washington Fish and Wildlife Office, Oregon Fish and Wildlife Office—Bend Field Office, and Klamath Falls Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.95, amend paragraph (d) by adding an entry for "Oregon Spotted Frog (*Rana pretiosa*)," to follow the entry for "Mountain Yellow-legged Frog (*Rana muscosa*), Southern California DPS", to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(d) *Amphibians.*

* * * * *

Oregon Spotted Frog (*Rana pretiosa*)

(1) Critical habitat units are depicted for Klickitat, Skagit, Skamania, Thurston, and Whatcom Counties in Washington and Deschutes, Jackson, Klamath, Lane, and Wasco Counties in Oregon, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Oregon spotted frog consist of three components:

(i) *Primary constituent element 1.—Nonbreeding (N), Breeding (B), Rearing (R), and Overwintering (O) Habitat.* Ephemeral or permanent bodies of fresh water, including, but not limited to, natural or manmade ponds, springs, lakes, slow-moving streams, or pools within or oxbows adjacent to streams, canals, and ditches, that have one or more of the following characteristics:

(A) Inundated for a minimum of 4 months per year (B, R) (timing varies by elevation but may begin as early as February and last as long as September);

(B) Inundated from October through March (O);

(C) If ephemeral, areas are hydrologically connected by surface water flow to a permanent water body (e.g., pools, springs, ponds, lakes, streams, canals, or ditches) (B, R);

(D) Shallow water areas (less than or equal to 30 centimeters (12 inches), or water of this depth over vegetation in deeper water (B, R);

(E) Total surface area with less than 50 percent vegetative cover (N);

(F) Gradual topographic gradient (less than 3 percent slope) from shallow water toward deeper, permanent water (B, R);

(G) Herbaceous wetland vegetation (i.e. emergent, submergent, and floating-leaved aquatic plants), or vegetation that can structurally mimic emergent wetland vegetation through manipulation (B, R);

(H) Shallow water areas with high solar exposure or low (short) canopy cover (B, R); and

(I) An absence or low density of nonnative predators (B, R, N).

(ii) *Primary constituent element 2.—Aquatic movement corridors.* Ephemeral or permanent bodies of fresh water that have one or more of the following characteristics:

(A) Less than or equal to 5 kilometers (3.1 miles) linear distance from breeding areas; and

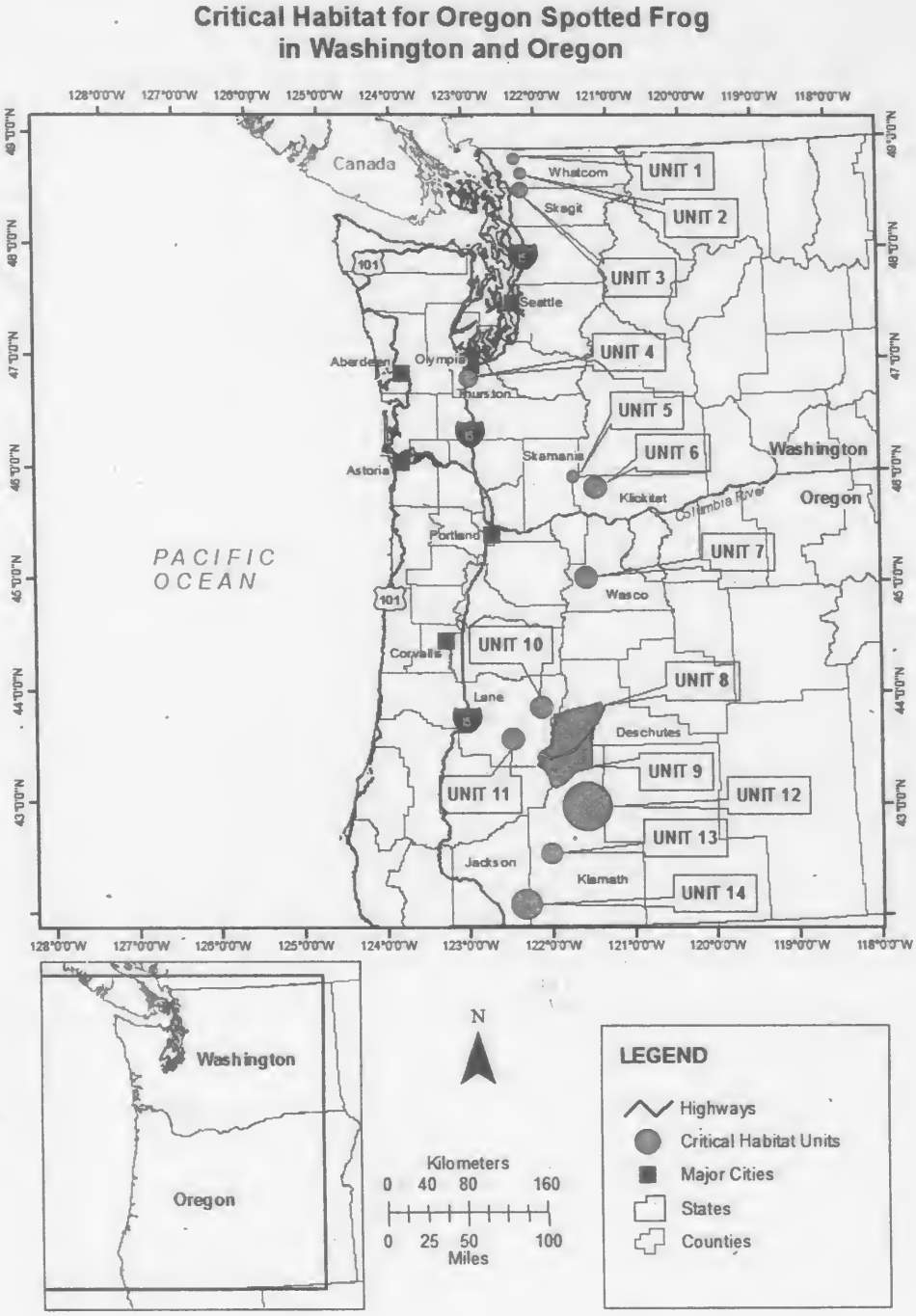
(B) Impediment free (including, but not limited to, hard barriers such as dams, biological barriers such as abundant predators, or lack of refugia from predators).

(iii) *Primary constituent element 3.—Refugia habitat.* Nonbreeding, breeding, rearing, or overwintering habitat or aquatic movement corridors with habitat characteristics (e.g., dense vegetation and/or an abundance of woody debris) that provide refugia from predators (e.g., nonnative fish or bullfrogs).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [*INSERT EFFECTIVE DATE OF THE FINAL RULE*].

(4) *Critical habitat map units.* Data layers defining map units were created from 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site (*http://www.fws.gov/wafwo*), *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0088, and at the field office(s) responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:



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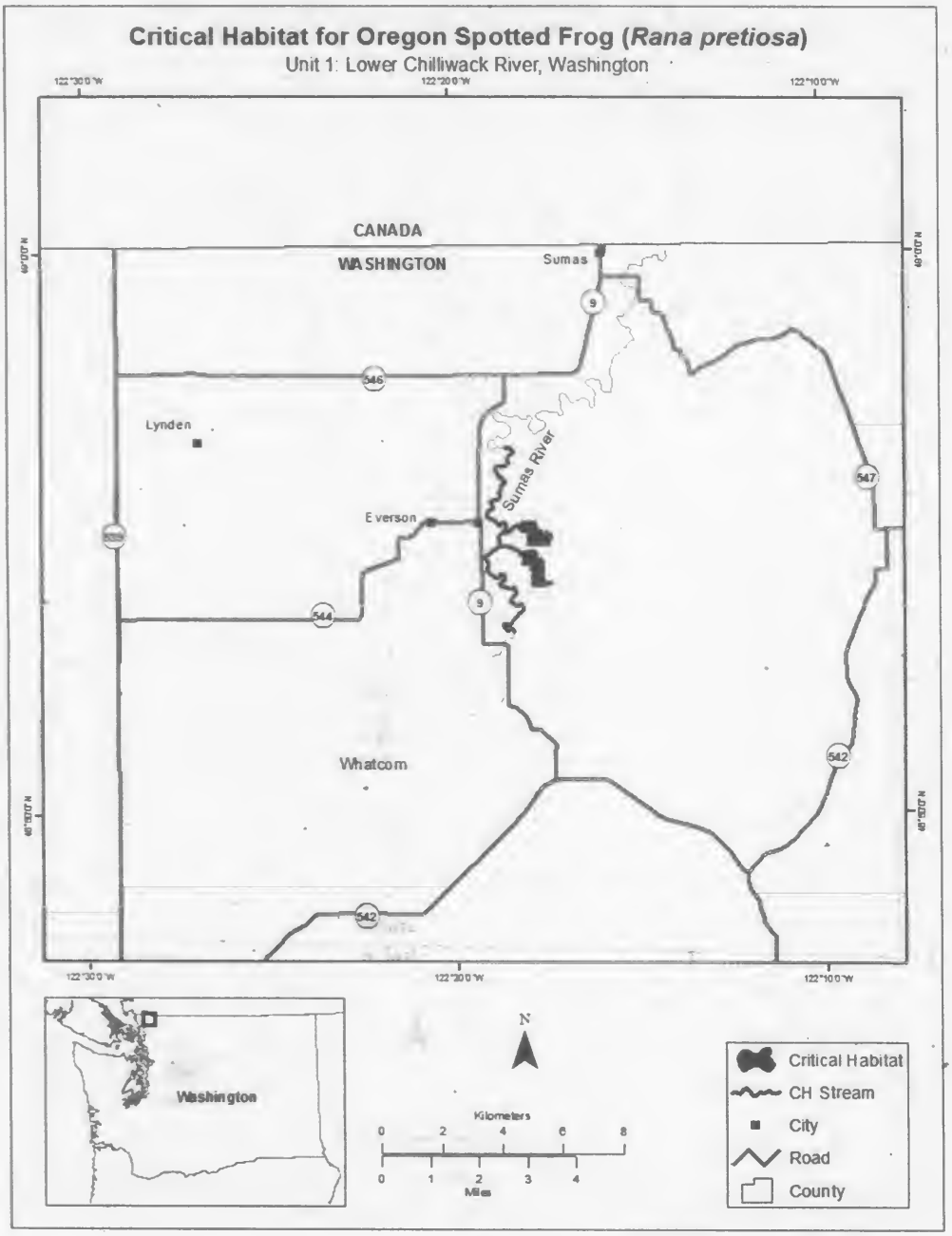
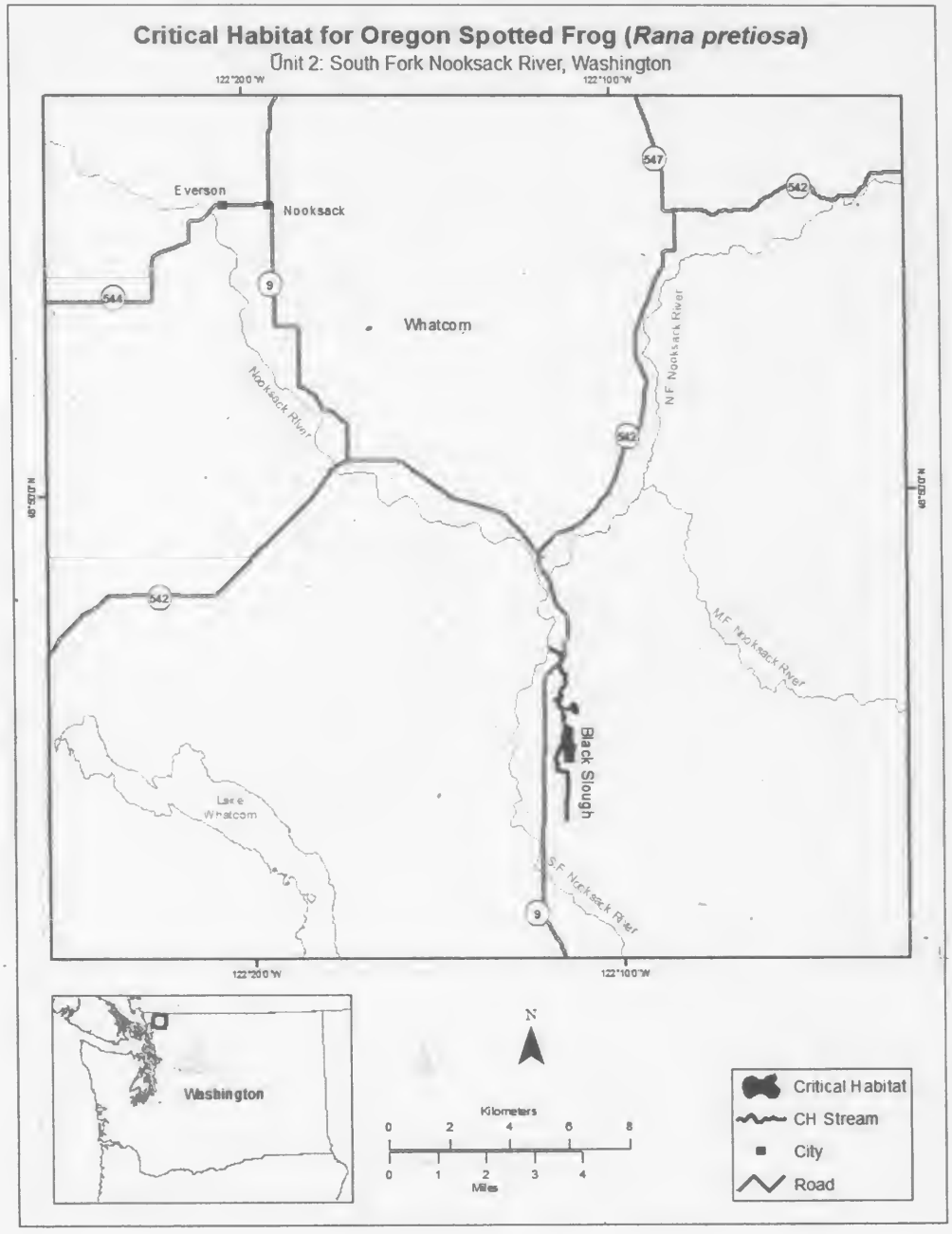
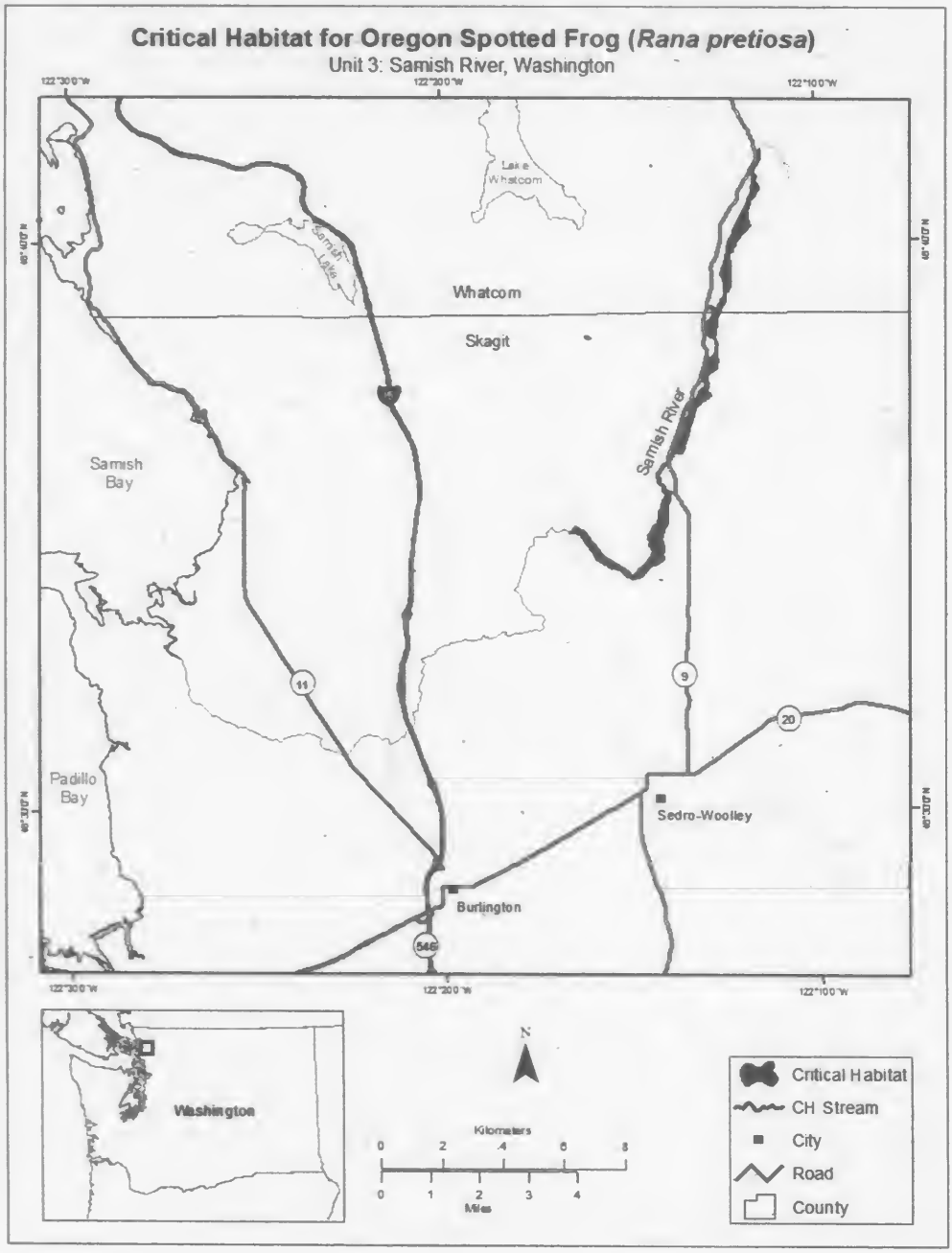
(6) Unit 1: Lower Chilliwack River, Whatcom County, Washington. Map of Unit 1 follows:



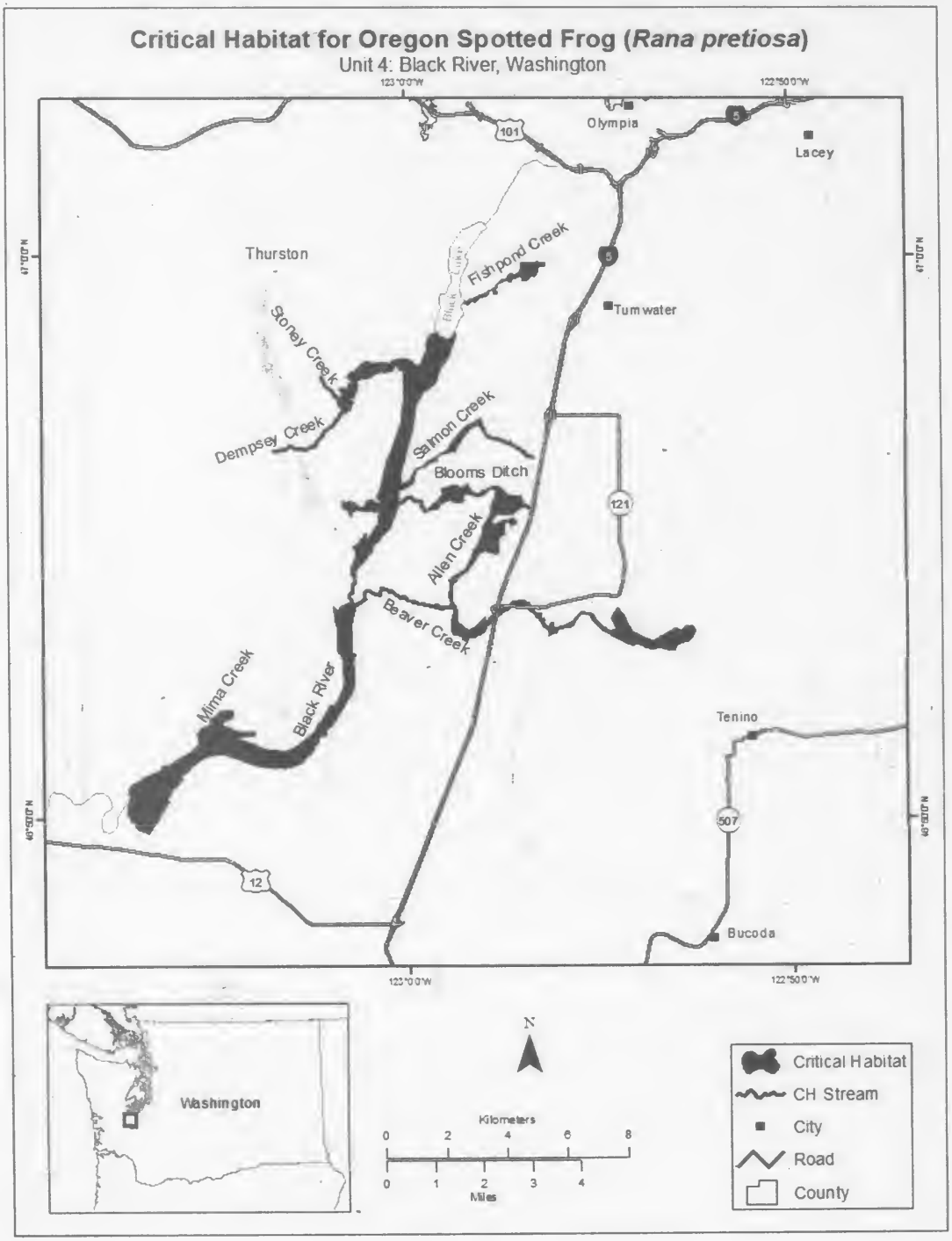
(7) Unit 2: South Fork Nooksack River, Whatcom County, Washington. Map of Unit 2 follows:



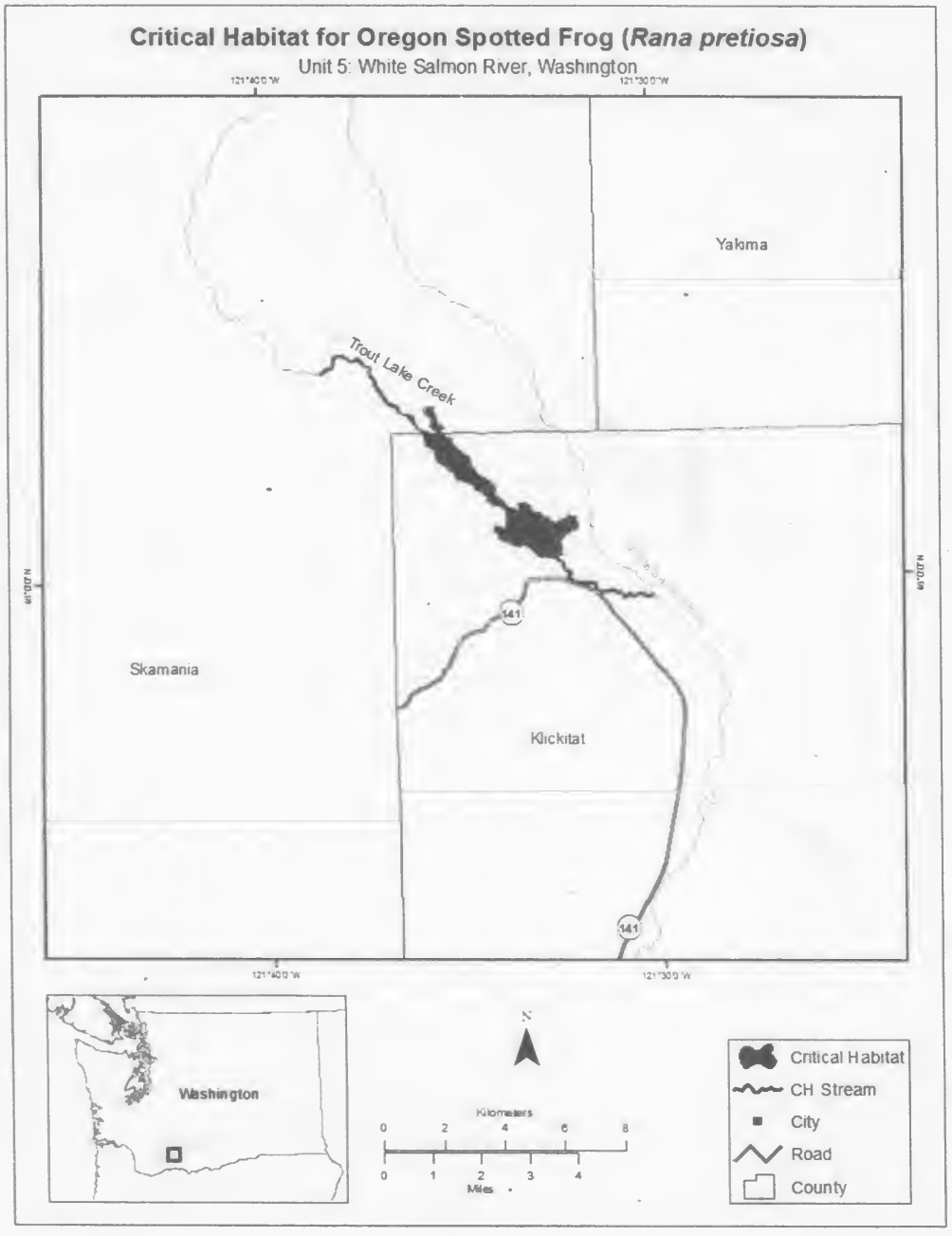
(8) Unit 3: Samish River, Whatcom and Skagit Counties, Washington. Map of Unit 3 follows:



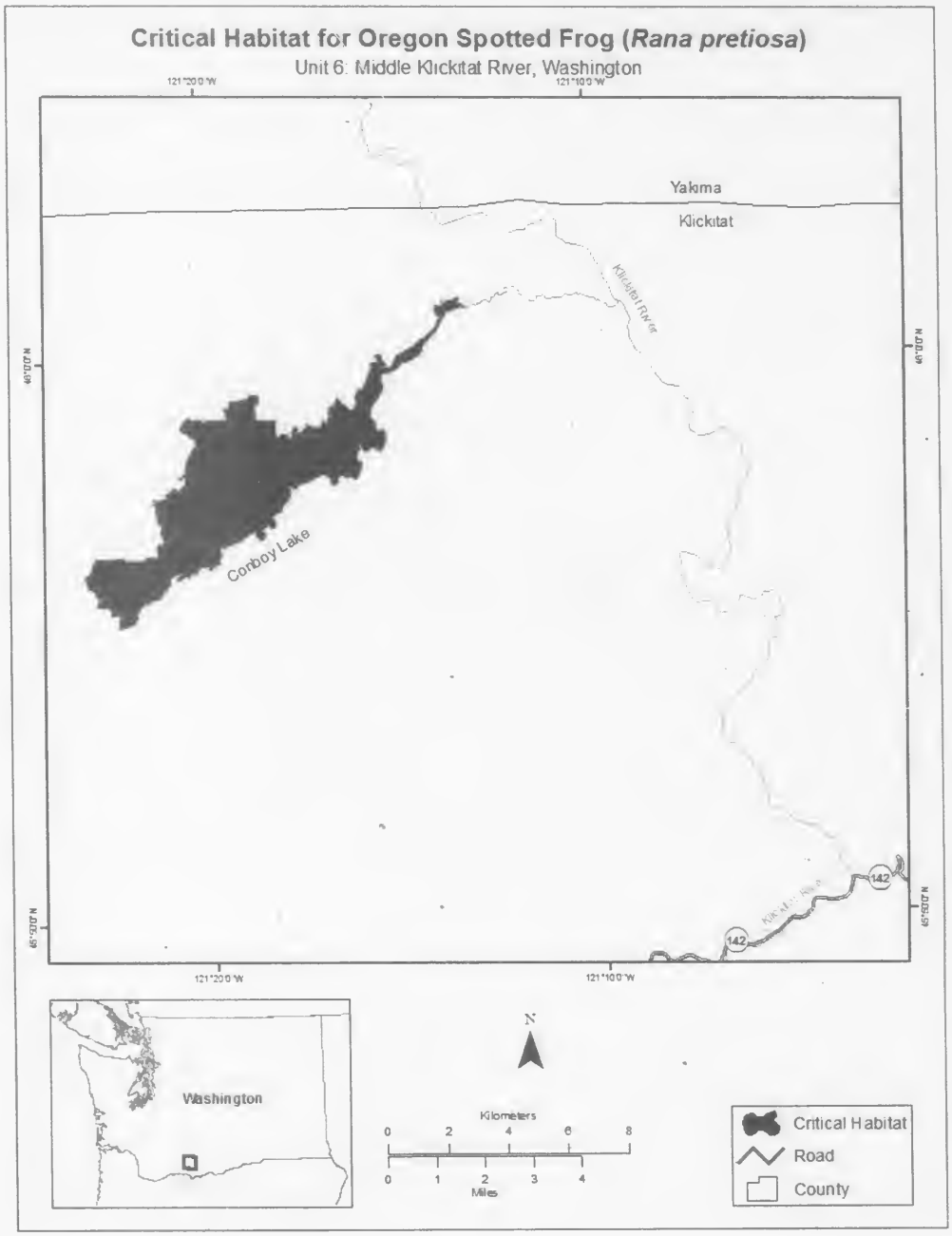
(9) Unit 4: Black River, Thurston County, Washington. Map of Unit 4 follows:



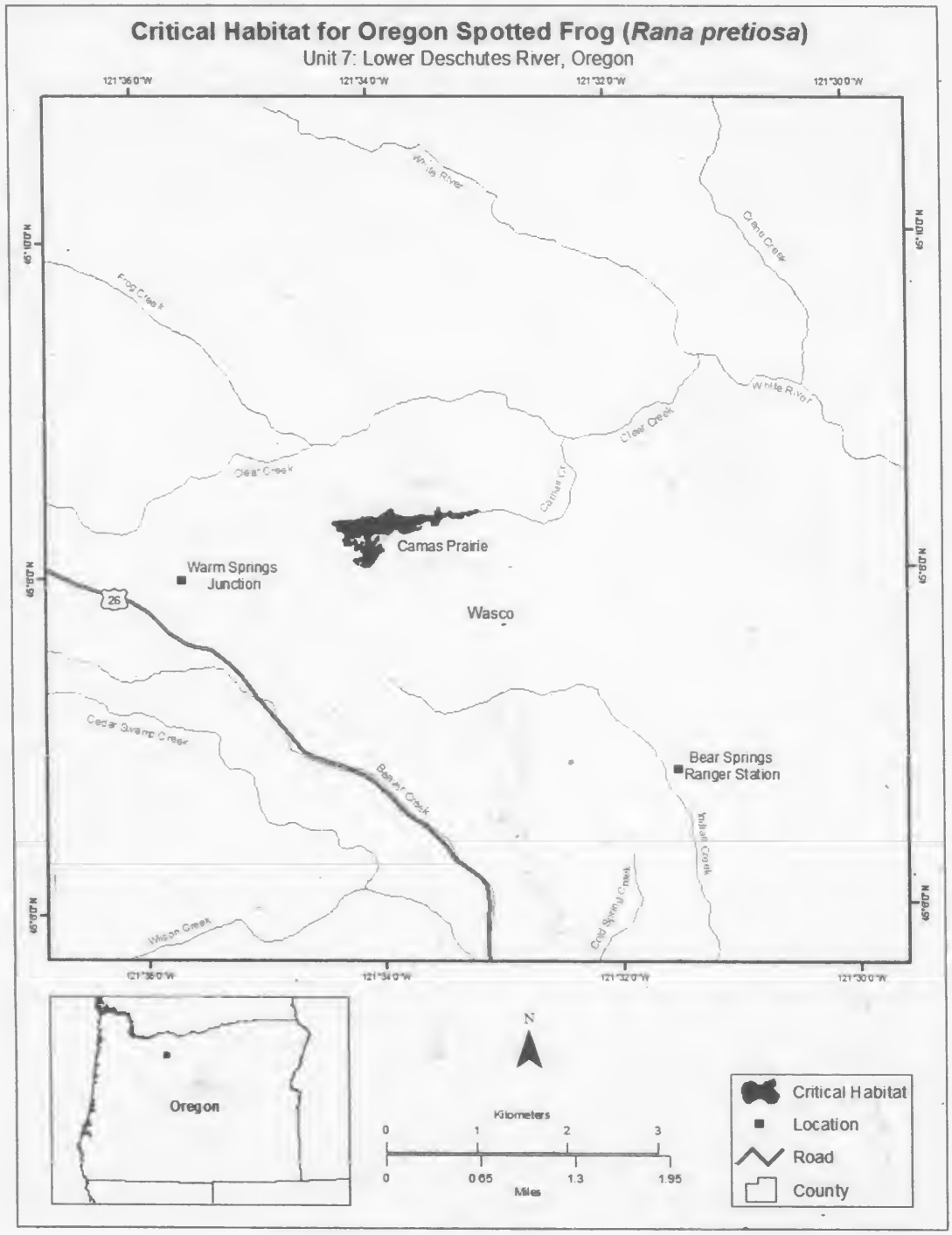
(10) Unit 5: White Salmon River, Skamania and Klickitat Counties, Washington. Map of Unit 5 follows:



(11) Unit 6: Middle Klickitat River, Klickitat County, Washington. Map of Unit 6 follows:

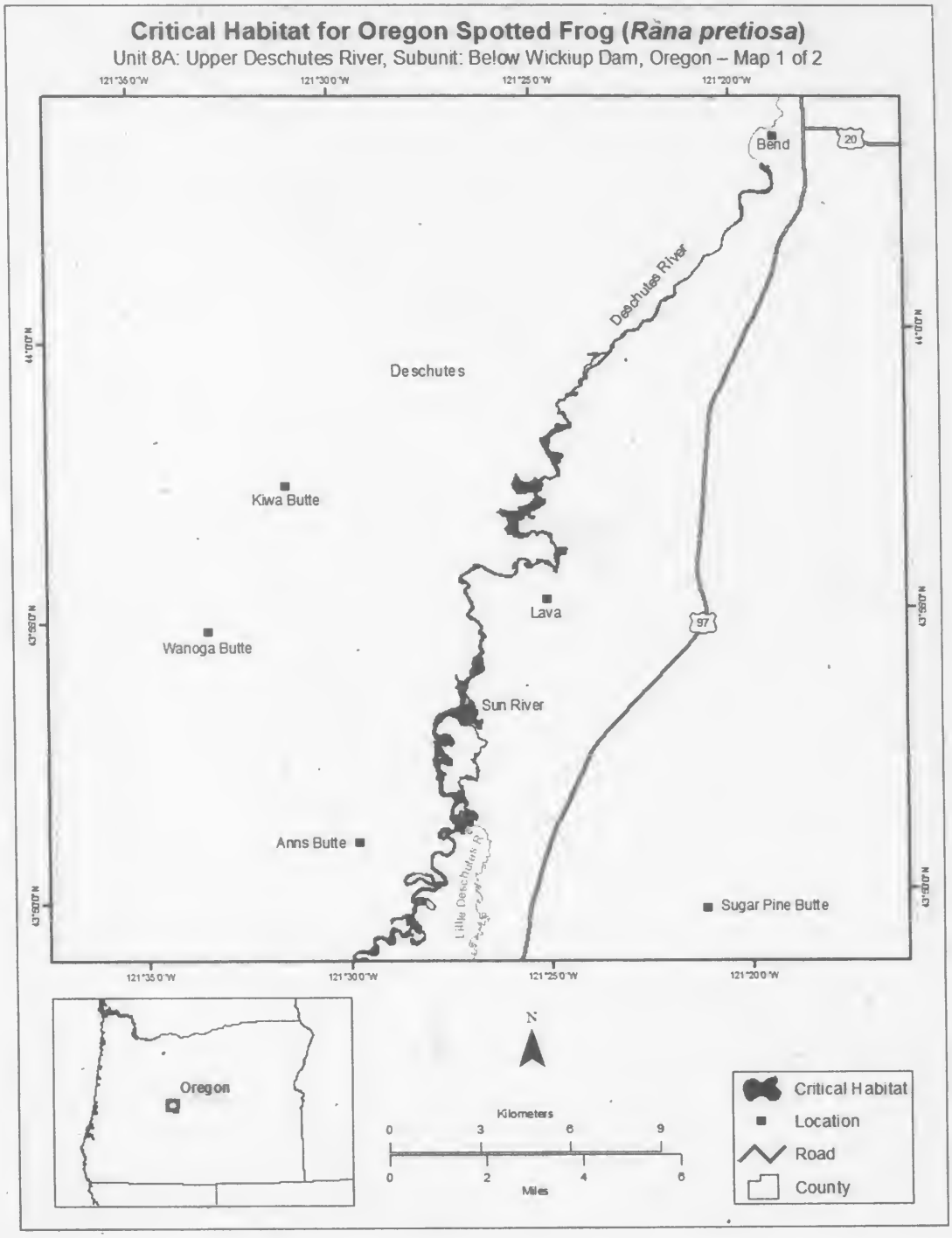


(12) Unit 7: Lower Deschutes River, Wasco County, Oregon. Map of Unit 7 follows:

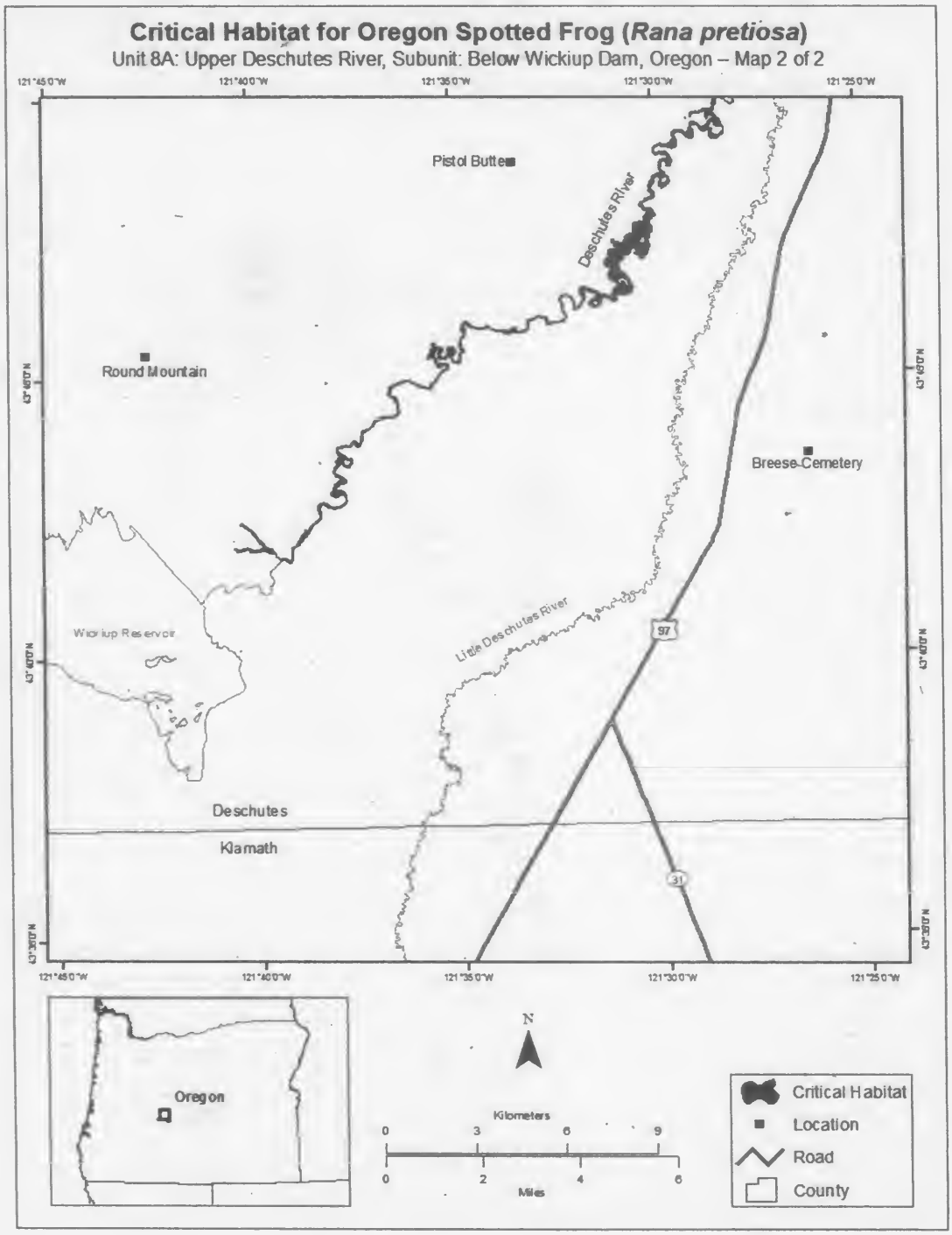


(13) Unit 8A: Upper Deschutes River, Subunit: Below Wickiup Dam, Oregon.

(i) Map 1 of 2, Upper Deschutes River, Below Wickiup Dam, Deschutes County, Oregon, Map 1 of 2 of Unit 8A follows:

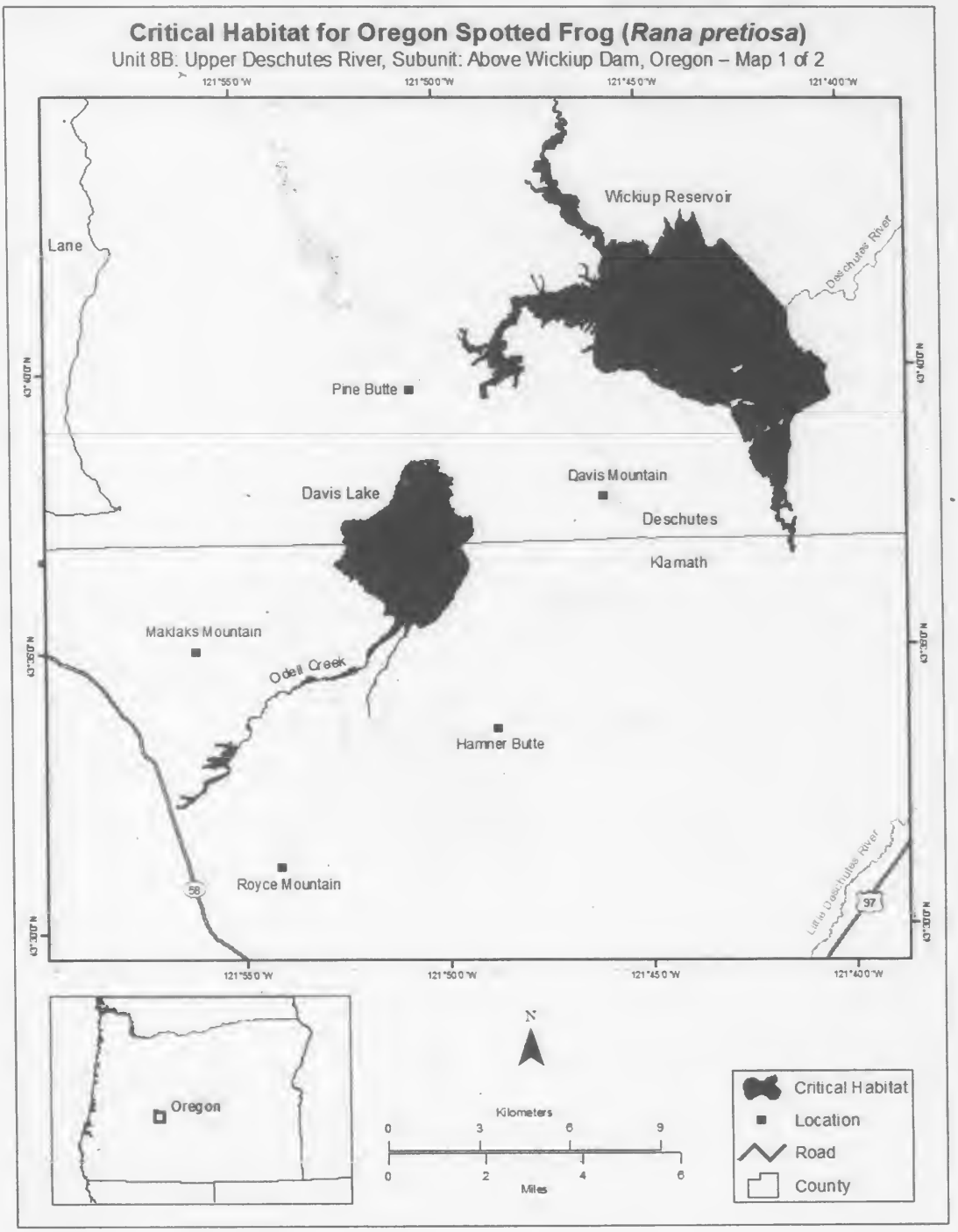


(ii) Map 2 of 2, Upper Deschutes River, Below Wickiup Dam, Deschutes County, Oregon. Map 2 of 2 of Unit 8A follows:

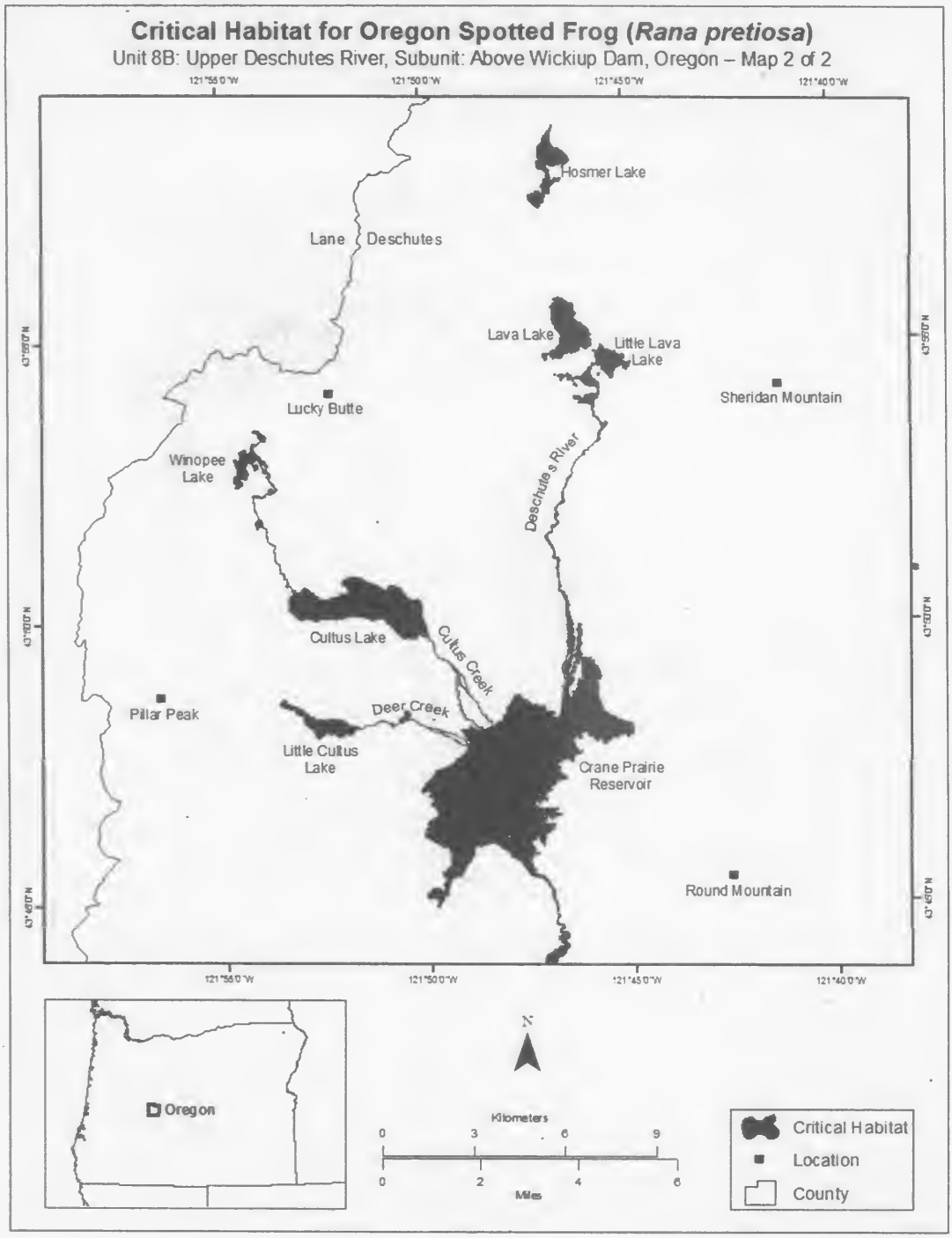


(14) Unit 8B: Upper Deschutes River, Subunit: Above Wickiup Dam, Oregon.

(i) Map 1 of 2, Upper Deschutes River, Above Wickiup Dam, Deschutes and Klamath Counties, Oregon. Map 1 of 2 of Unit 8B follows:

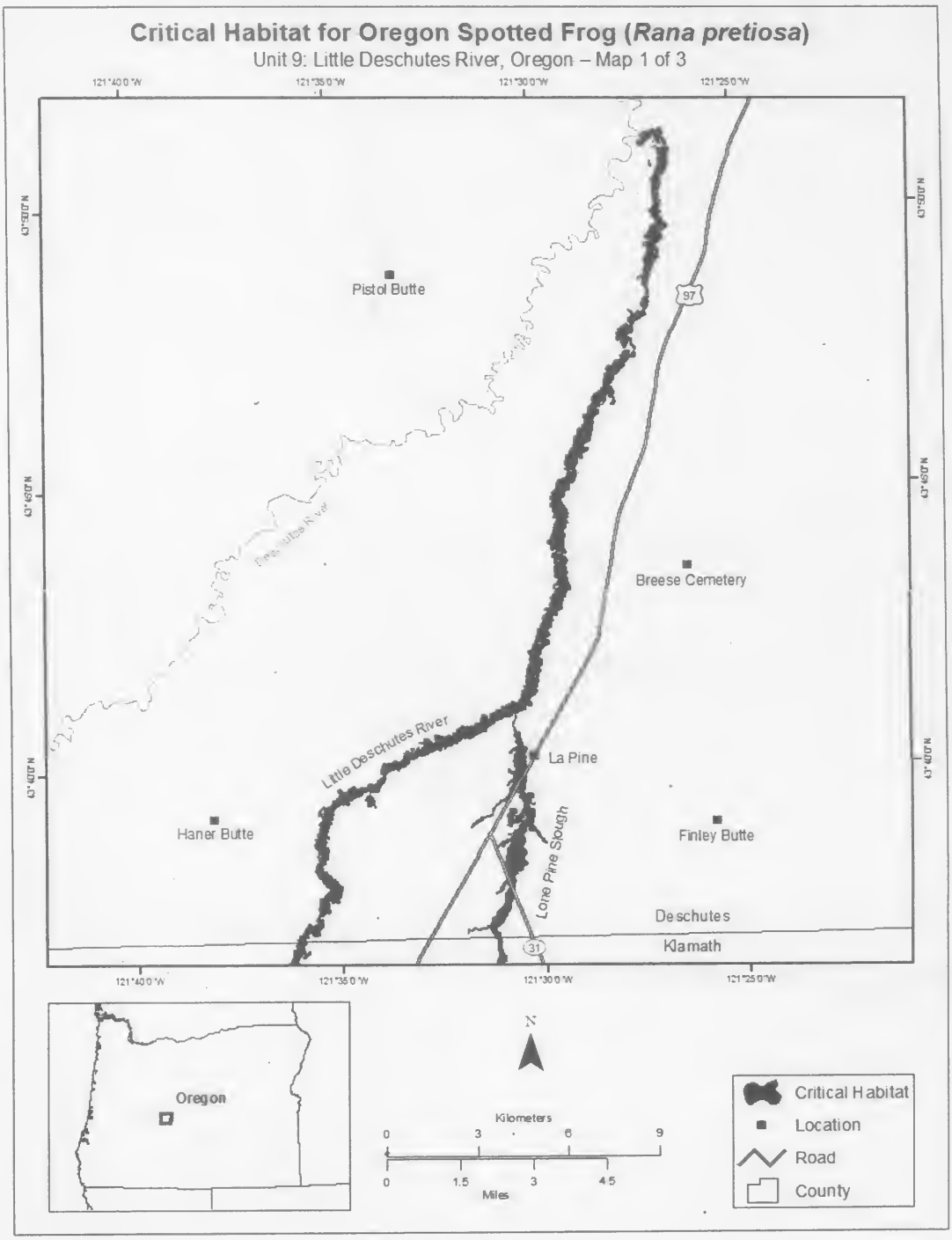


(ii) Map 2 of 2, Upper Deschutes River, Above Wickiup Dam, Deschutes and Klamath Counties, Oregon. Map 2 of 2 of Unit 8B follows:

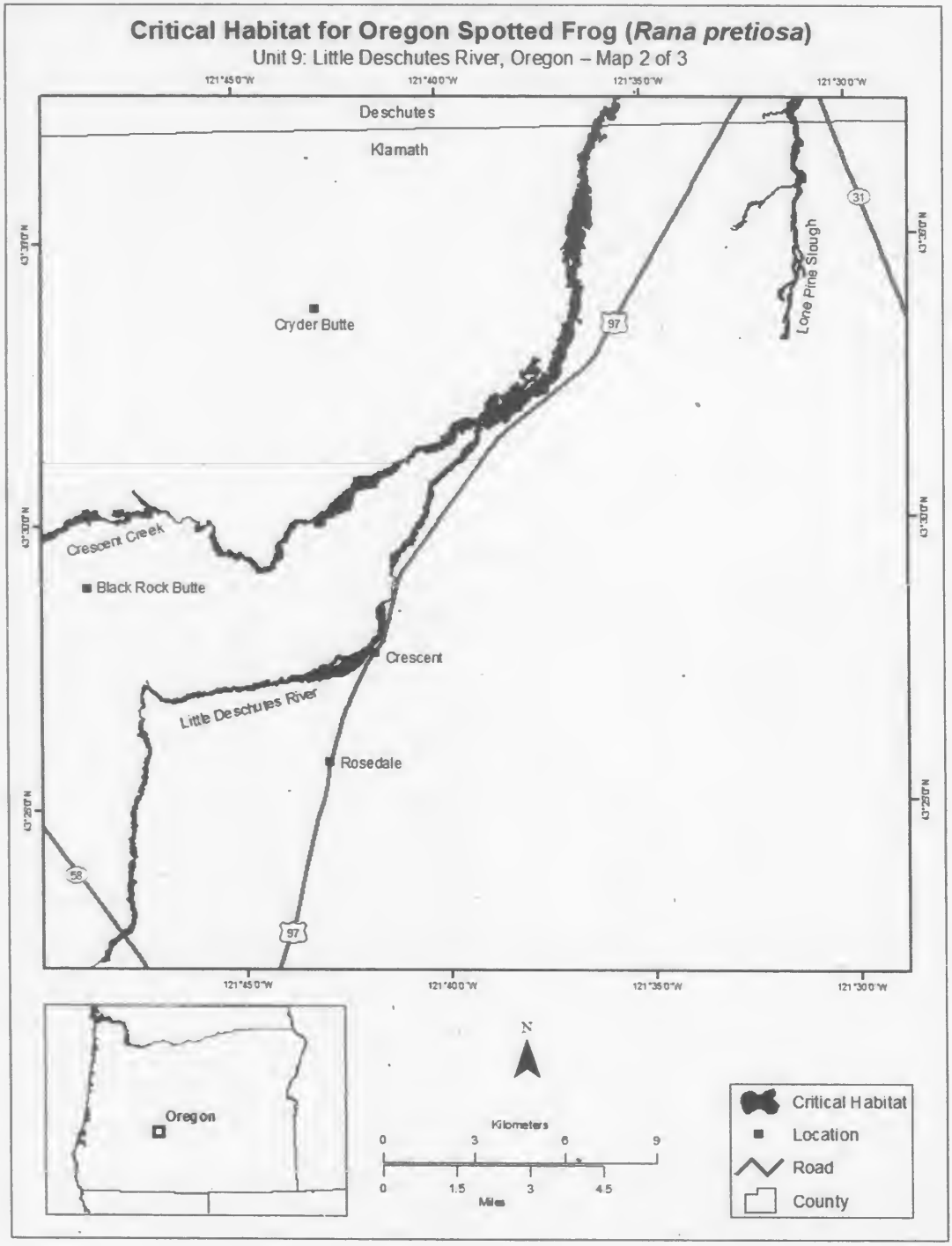


(15) Unit 9: Little Deschutes River, Deschutes and Klamath Counties, Oregon.

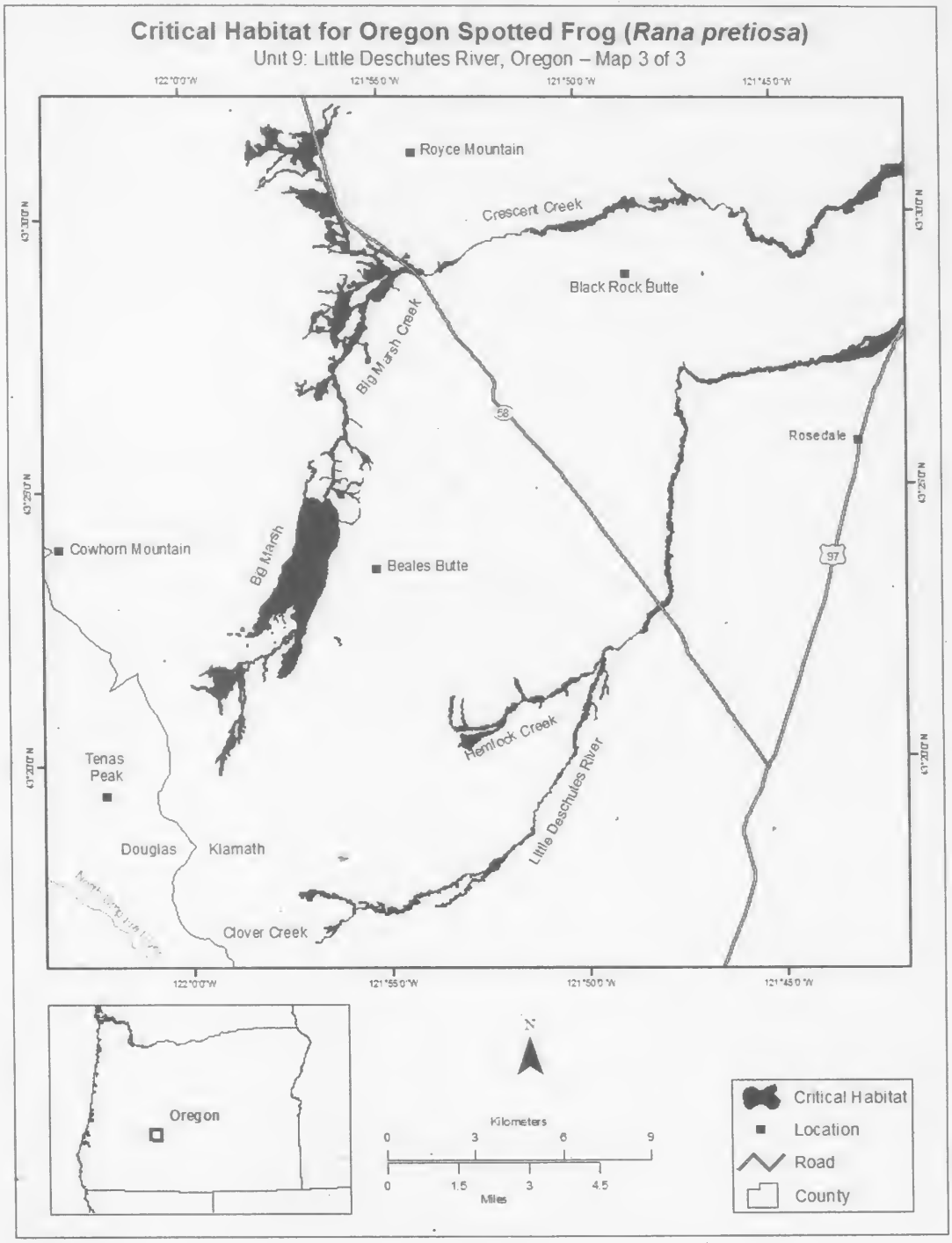
(i) Map 1 of 3, Little Deschutes River, Deschutes and Klamath Counties, Oregon. Map 1 of 3 of Unit 9 follows:



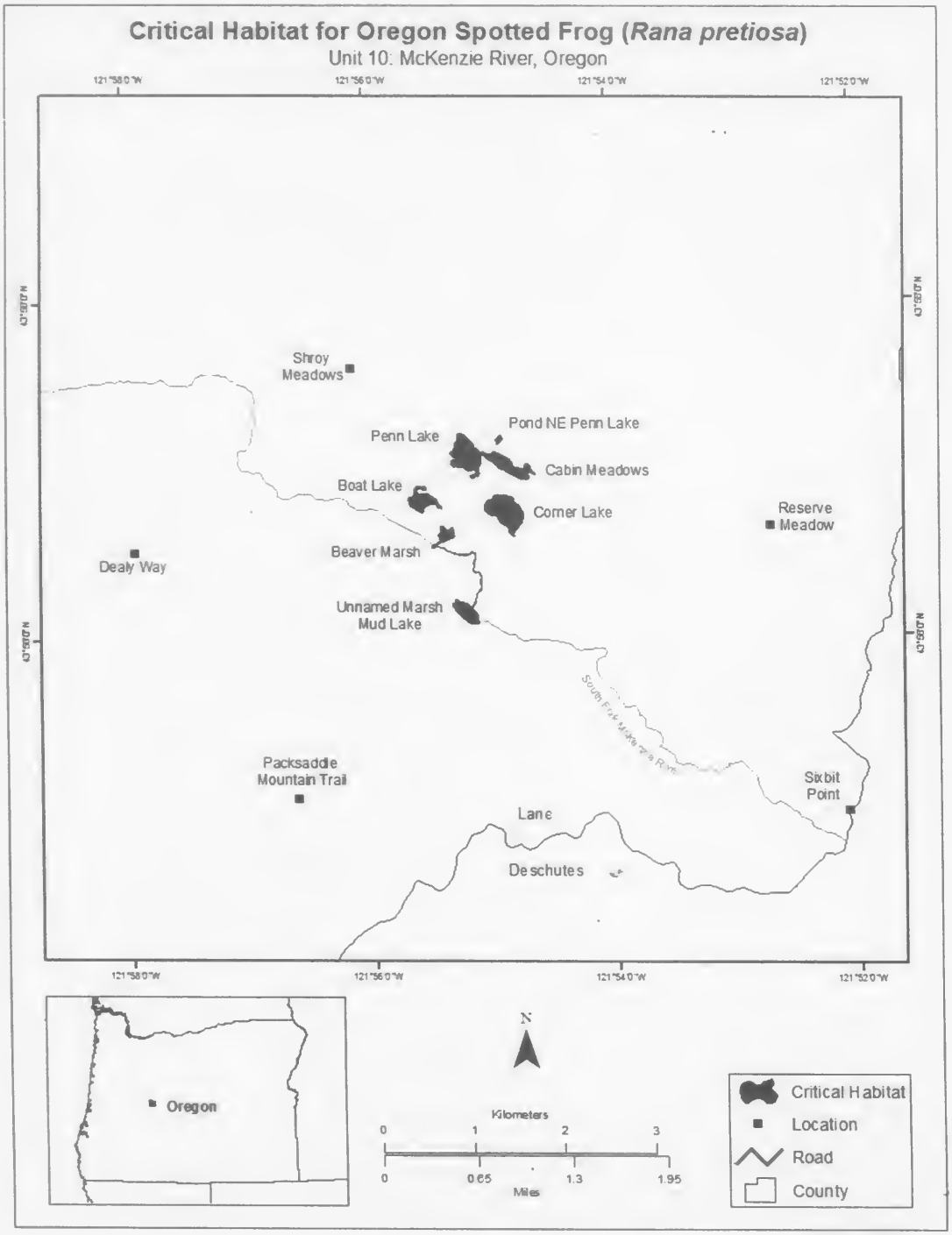
(ii) Map 2 of 3, Little Deschutes River, Deschutes and Klamath Counties, Oregon. Map 2 of 3 of Unit 9 follows:



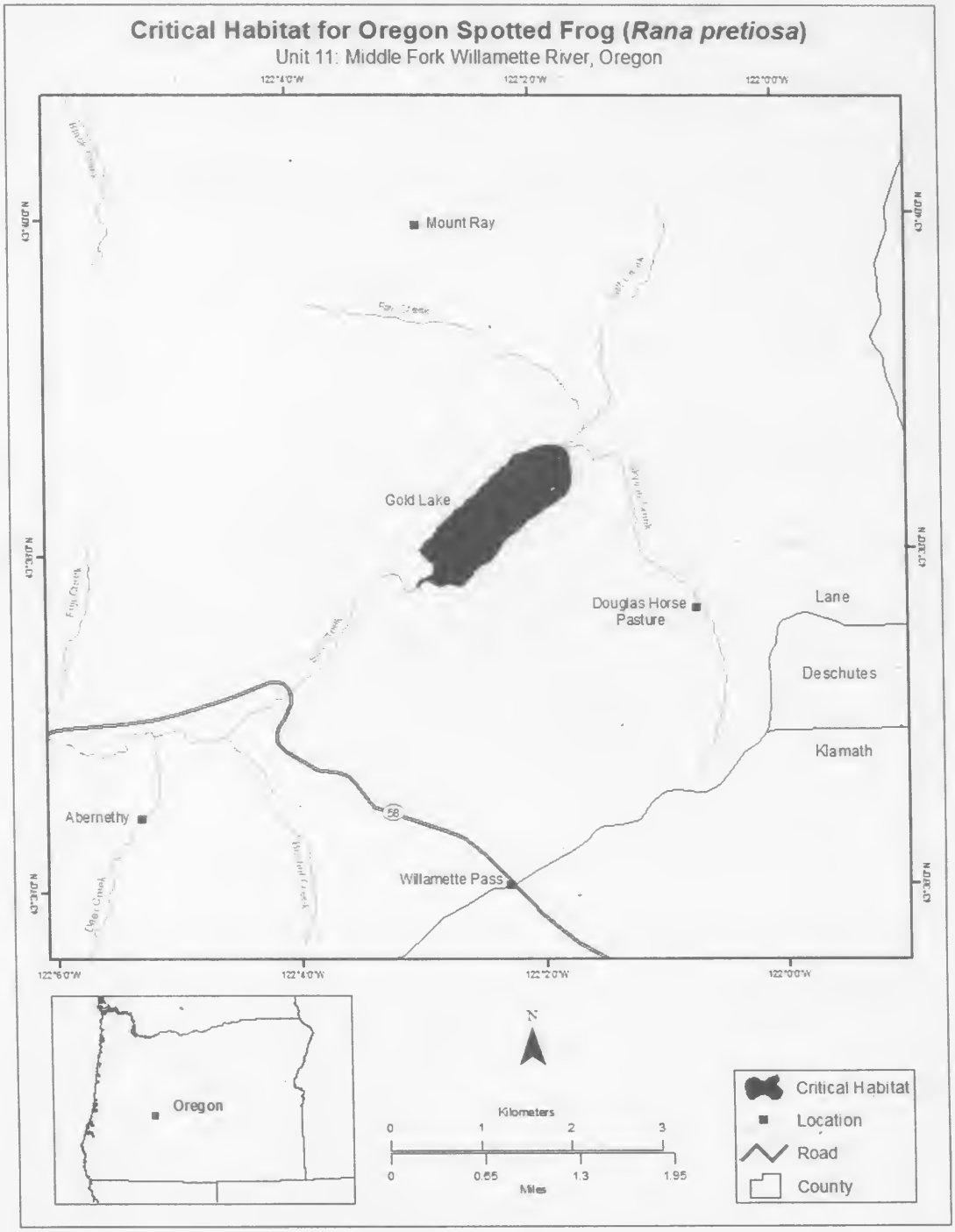
(iii) Map 3 of 3, Little Deschutes River, Deschutes and Klamath Counties, Oregon. Map 3 of 3 of Unit 9 follows:



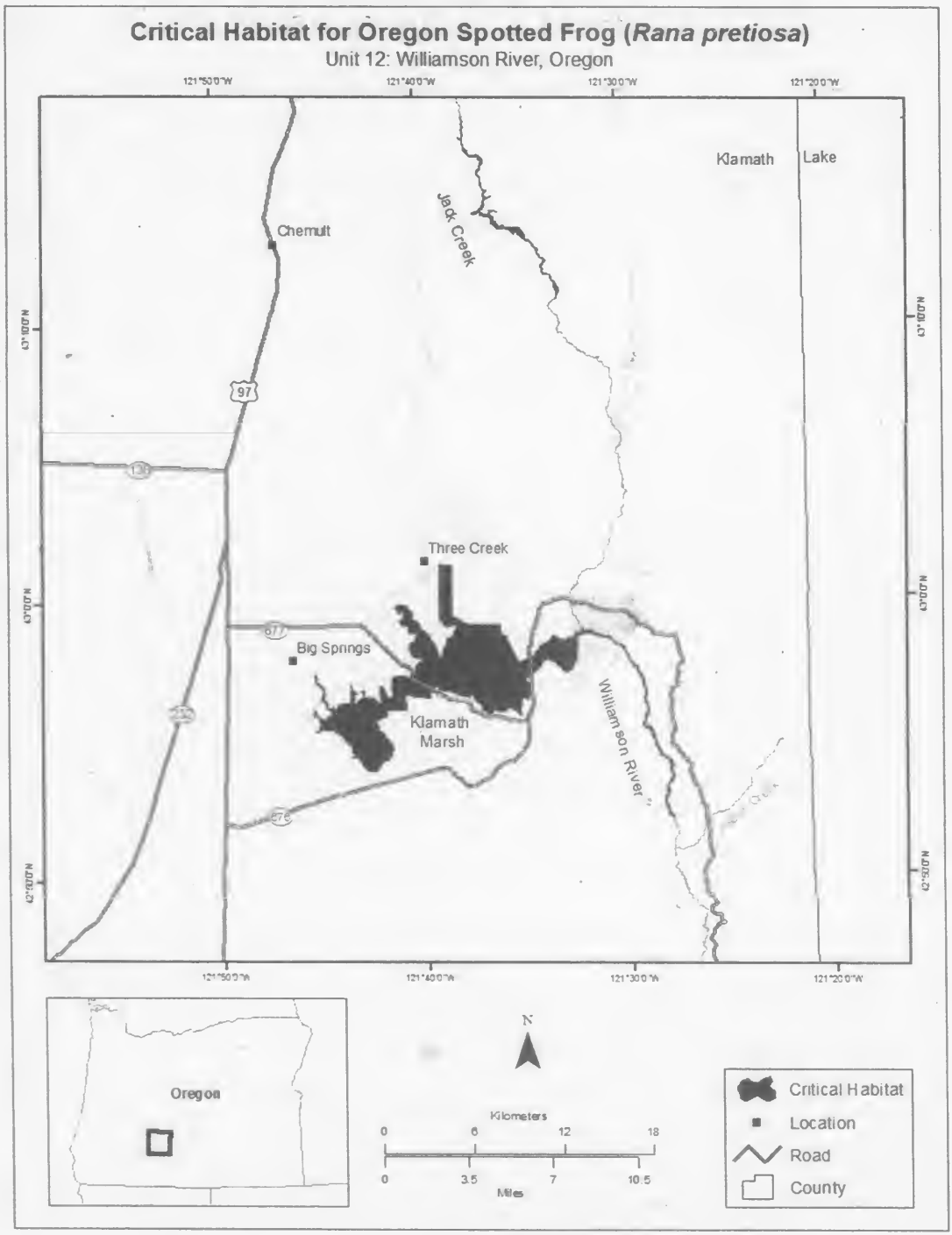
(16) Unit 10: McKenzie River, Lane County, Oregon. Map of Unit 10 follows:



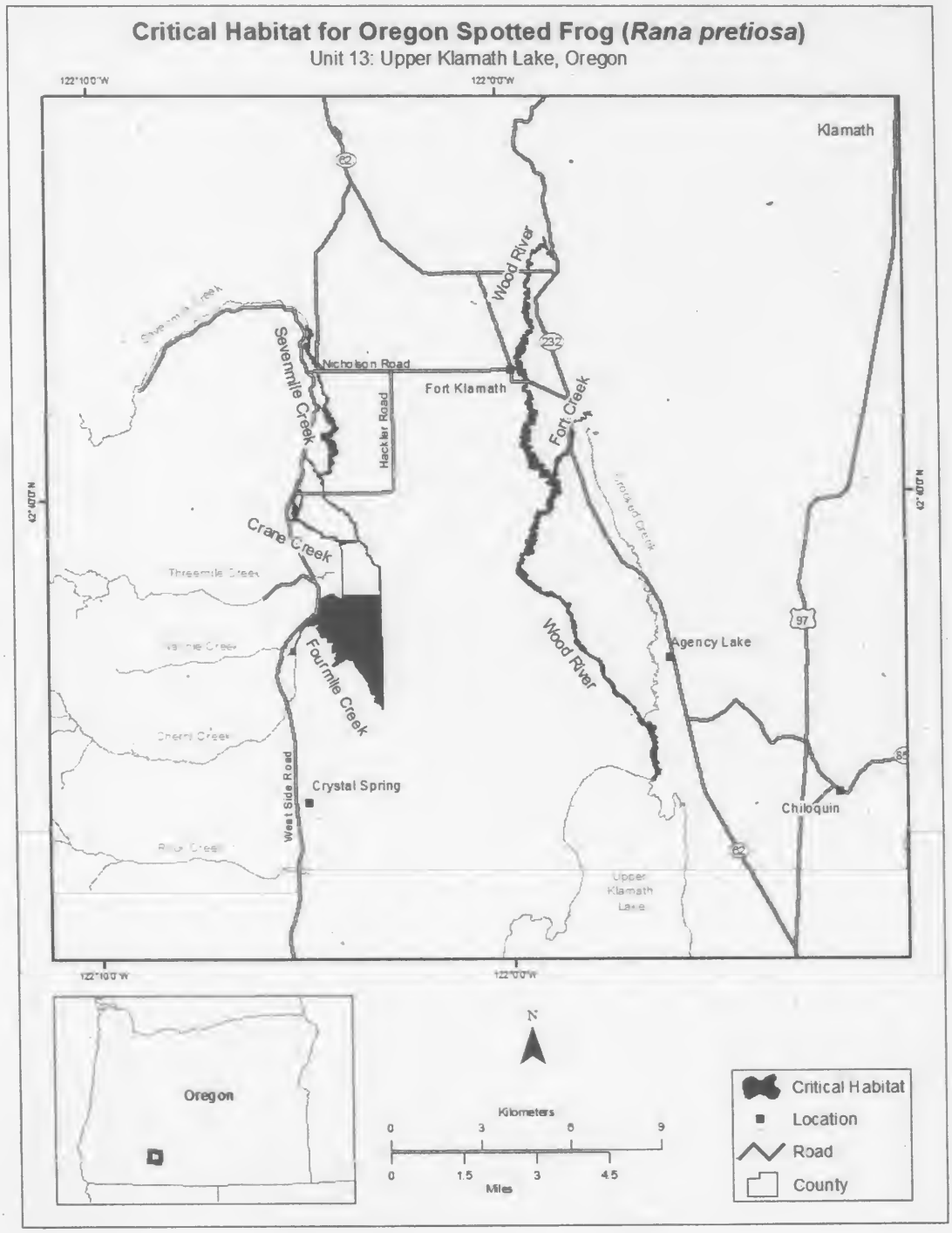
(17) Unit 11: Middle Fork Willamette River, Lane County, Oregon. Map of Unit 11 follows:



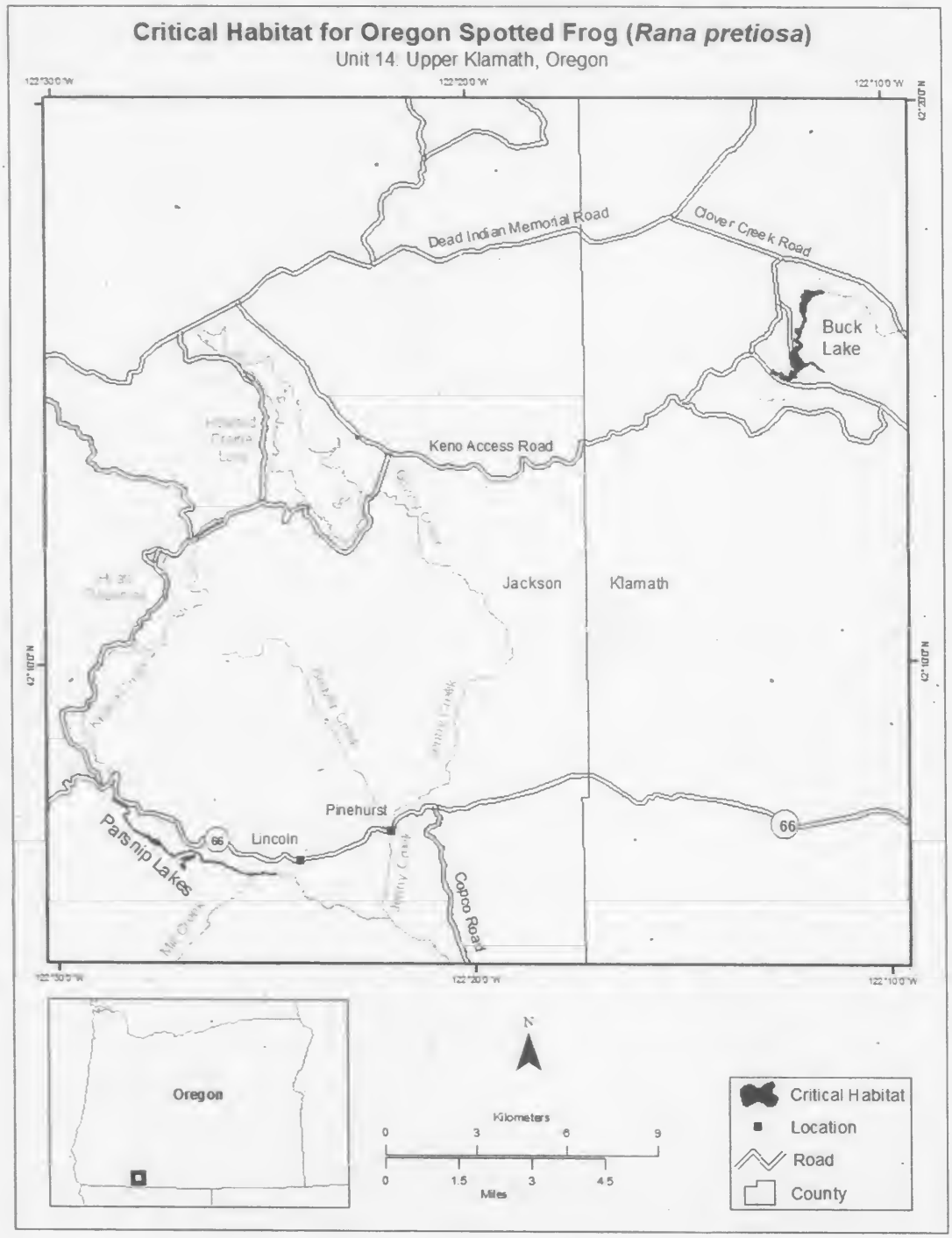
(18) Unit 12: Williamson River, Klamath County, Oregon. Map of Unit 12 follows:



(19) Unit 13: Upper Klamath Lake, Klamath County, Oregon. Map of Unit 13 follows:



(20) Unit 14: Upper Klamath, Jackson and Klamath Counties, Oregon. Map of Unit 14 follows:



* * * * *

Dated: August 6, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–20985 Filed 8–28–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Thursday,
No. 168 August 29, 2013

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for Oregon Spotted Frog; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2013–0013; 4500030113]

RIN 1018–AZ04

Endangered and Threatened Wildlife and Plants; Threatened Status for Oregon Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the Oregon spotted frog (*Rana pretiosa*), as a threatened species under the Endangered Species Act. If we finalize this rule as proposed, it would extend the Act's protections to this species. The effect of this regulation is to add this species to the list of Endangered and Threatened wildlife under the Act.

DATES: We will accept comments received or postmarked on or before October 28, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 15, 2013.

ADDRESSES: *Written Comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R1–ES–2013–0013, which is the docket number for this rulemaking. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2013–0013; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503, by telephone 360–753–9440 or by facsimile 360–753–9445. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Listing a species as an endangered or threatened species can be completed only by issuing a rulemaking. The Oregon spotted frog is a candidate for listing and, by virtue of a settlement agreement with Wild Earth Guardians, we must make a final listing determination under the Act by the end of fiscal year 2014.

- This rule will propose to list the Oregon spotted frog as threatened.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have determined that the Oregon spotted frog is impacted by one or more of the following factors to the extent that the species meets the definition of a threatened species under the Act:

- Habitat necessary to support all life stages is continuing to be impacted and/or destroyed by human activities that result in the loss of wetlands to land conversions; hydrologic changes resulting from operation of existing water diversions/manipulation structures, new and existing residential and road developments, drought, and removal of beavers; changes in water temperature and vegetation structure resulting from reed canarygrass invasions, plant succession, and restoration plantings; and increased sedimentation, increased water temperatures, reduced water quality, and vegetation changes resulting from the timing and intensity of livestock grazing (or in some instances, removal of livestock grazing at locations where it maintains early seral stage habitat essential for breeding);
- Predation by nonnative species, including nonnative trout and bullfrogs;
- Inadequate existing regulatory mechanisms that result in significant negative impacts such as habitat loss and modification; and
- Other natural or manmade factors including small and isolated breeding locations, low connectivity, low genetic diversity within occupied sub-basins, and genetic differentiation between sub-basins.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(6) Land use designations and current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(7) Information on the projected and reasonably likely impacts of climate change on the Oregon spotted frog.

(8) Information on the type, application of, and methods of monitoring chemical contaminants, in addition to the projected and reasonably likely impacts of chemical contaminants on the Oregon spotted frog.

(9) The development of a 4(d) special rule. We are also considering developing a special rule to exempt certain ongoing land and water management activities (e.g., grazing, mechanical vegetation management, water level manipulation) from take prohibitions of the Act if the Oregon spotted frog is listed, when those activities are conducted in a manner consistent with the conservation of the frog. Under section 4(d) of the Act, the Secretary may publish a special rule that modifies the standard protections for threatened species with special measures tailored to the conservation of the species that are determined to be necessary and advisable. Note that a 4(d) special rule will not remove or alter in any way the consultation requirements under section 7 of the Act.

We see meaningful opportunities to conserve the Oregon spotted frog by allowing and promoting ongoing, and possibly new, activities on non-Federal lands that contribute to the conservation of this now largely management-dependent species. The Service is continuing to evaluate the range and scope of activities that may be consistent with the conservation of the frog and the range of options for providing "take" coverage (e.g., special rules, Habitat Conservation Plans, Safe Harbor Agreements, and other types of conservation agreements) for non-Federal landowners conducting these activities that further Oregon spotted frog conservation. We are specifically seeking information and comments regarding:

(a) What measures are necessary and advisable for the conservation and management of the Oregon spotted frog that are appropriate for a proposed 4(d) special rule to encourage landowners to manage their lands for the benefit of the Oregon spotted frog.

(b) Information regarding the types of activities that occur within Oregon spotted frog habitat and how they are or can be implemented (e.g., timing, extent) consistent with maintaining or advancing conservation of the frog.

(c) Whether the Service should develop a 4(d) special rule to allow incidental take of Oregon spotted frog if the take results from implementation of a comprehensive State conservation program or regional or local conservation programs.

(d) Information concerning whether it would be appropriate to include in the 4(d) special rule a provision for take of Oregon spotted frog in accordance with applicable State law for educational or scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(e) Additional provisions the Service may wish to consider for a 4(d) special rule in order to conserve, recover, and manage the Oregon spotted frog.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

We received a petition dated May 1, 1989, from the Board of Directors of the Utah Nature Study Society on May 4, 1989. The petition requested that the U.S. Fish and Wildlife Service (Service or USFWS) add the spotted frog (*Rana pretiosa*) to the Federal List of Endangered and Threatened Species. The Service published a notice of a 90-day finding in the **Federal Register** (54 FR 42529) on October 17, 1990, stating that substantial information indicates that the petitioned action may be warranted. On May 7, 1993, the Service published a 12-month finding in the **Federal Register** (58 FR 27260) indicating that the spotted frog (*Rana pretiosa*) warranted listing as threatened in some portions of its range, but was precluded by other higher priority listing actions. Subsequent genetic analyses separated the spotted frog into two separate species, *Rana pretiosa* (Oregon spotted frog) and *Rana luteiventris* (Columbia spotted frog). The Service recognized these taxonomic changes in the **Federal Register** (62 FR 49398) on September 19, 1997, and assigned a listing priority number of "2" to the Oregon spotted frog and a listing priority number of "3" (Wasatch Front population), "6" (West Desert population), or "9" (Great Basin population) for the Columbia spotted frog. The candidate status for Oregon spotted frog was most recently reaffirmed in the October 26, 2011, Candidate Notice of Review (CNOR) (76 FR 66370).

In a settlement agreement with plaintiff WildEarth Guardians on May 10, 2011, the Service submitted a workplan to the U.S. District Court for the District of Columbia in *re Endangered Species Act Section 4 Deadline Litigation*, No. 10–377 (EGS), MDL Docket No. 2165 (D. DC May 10, 2011), and obtained the court's approval to systematically, over a period of 6 years, review and address the needs of more than 250 candidate species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. The Oregon spotted frog is one of the candidate species identified in the May 2011 workplan.

Status Assessment for Oregon Spotted Frog

Background

Species Description

The Oregon spotted frog is named for the characteristic black spots covering the head, back, sides, and legs. The dark spots have ragged edges and light centers, usually associated with a tubercle or raised area of skin. These spots become larger and darker, and the edges become more ragged with age (Hayes 1994, p. 14). Body color also varies with age. Juveniles are usually brown or, occasionally, olive green on the back and white, cream, or flesh-colored with reddish pigments on the underlegs and abdomen (McAllister and Leonard 1997, pp. 1–2). Adults range from brown to reddish brown but tend to become redder with age. Large, presumably older, individuals may be brick red over most of the dorsal (back) surfaces (McAllister and Leonard 1997, pp. 1–2). Red surface pigments on the adult abdomen also increase with age, and the underlegs of adults are a vivid orange red. Tan to orange folds along the sides of the back (dorsolateral folds) extend from behind the eye to midway along the back (McAllister and Leonard 1997, p. 1). The eyes are upturned; there is a faint mask, and a light jaw stripe extends to the shoulder. Small bumps and tubercles usually cover the back and sides (Leonard *et al.* 1993, p. 130). The hind legs are short relative to body length, and the hind feet are fully webbed (Leonard *et al.* 1993, p. 130).

The Oregon spotted frog is a medium-sized frog that ranges from about 44 to 105 millimeters (mm) (1.7 to 4.1 inches (in)) in body length (McAllister and Leonard 1997, p. 1; Rombough *et al.* 2006, p. 210). Females are typically larger than males; females reach up to 105 mm (4 in) (Rombough *et al.* 2006, p. 210) and males to 75 mm (3 in) (Leonard *et al.* 1993, p. 130).

Morphological characters can be used to distinguish Oregon spotted frogs from other closely related spotted frogs. Mottling with dark pigments and fragmentation of the superficial red or orange-red wash on the abdomen can distinguish the Oregon spotted frog from some Columbia spotted frog populations (Hayes 1997, p. 3; Hayes *et al.* 1997, p. 1). Coloration of the underlegs and abdomen, size and shapes of spots, groin mottling, eye positions, relative length of hind legs to body size, degree of webbing, behaviors, and other characteristics can be used to distinguish among adults of closely related species. However, tadpoles are difficult to distinguish among species (Corkran and Thoms 1996, p. 150; McAllister and Leonard 1997, p. 6).

The Oregon spotted frog has a weak call consisting of a rapid series of six to nine low clucking notes described as sounding like a distant woodpecker's tapping. Males will call at any time, both day and night (McAllister and Leonard 1997, p. 12). Males have been documented to call from submerged sites that are physically distant (tens to hundreds of meters) from oviposition (egg-laying) sites (Bowerman 2010, p. 85). These submerged calls are inaudible at the surface and begin several days prior to breeding. Submerged calling is more frequent at night, although daytime calling has been recorded during overcast days (Bowerman 2010, pp. 85–86). It is unclear if mate selection takes place during this period of calling remotely from the breeding site, but it seems likely (Bowerman 2010, p. 86). This species rarely vocalizes except during the breeding season, which occurs in the spring (Leonard *et al.* 1993, p. 132); however, vocalizations have been heard during the fall (Leonard *et al.* 1997, pp. 73–74; Pearl 2010, pers. comm.).

Taxonomy

The common name "spotted frog" and the scientific name *Rana pretiosa* (order Anura; family Ranidae) were first applied to a series of five specimens collected in 1841 by Baird and Girard (1853, p. 378) from the vicinity of Puget Sound. Two of these specimens were later determined to be northern red-legged frogs (*Rana aurora*) (Hayes 1994, p. 4; Green *et al.* 1997, p. 4). Dunlap (1955) demonstrated the morphological differences between northern red-legged frogs, Cascades frogs, and spotted frogs. Subsequently, the "spotted frog" was separated into two species, *Rana pretiosa* (Oregon spotted frog) and *Rana luteiventris* (Columbia spotted frog) based on genetic analyses (Green *et al.* 1996, 1997).

Phylogenetic analyses were conducted on samples of Oregon spotted frogs collected from 3 locations in Washington and 13 locations in Oregon (Funk *et al.* 2008). Results indicate two well-supported clades (a group of biological taxa (as species) that includes all descendants of one common ancestor) nested within the Oregon spotted frog: the Columbia clade (Trout Lake Natural Area Preserve (NAP) and Camas Prairie) and the southern Oregon clade (Wood River and Buck Lake in the Klamath Basin). The Columbia River does not appear to act as a barrier, as the two sites that comprise the Columbia clade occur in Washington (Trout Lake NAP) and in Oregon (Camas Prairie). Haplotype and nucleotide diversity was low for Oregon spotted frogs in general and was very low for each of the two nested clades, respectively (Funk *et al.* 2008, p. 203). Only six haplotypes were found across the entire range of the Oregon spotted frog, indicating low genetic variation (Funk *et al.* 2008, p. 205). Recent genetic work conducted by Robertson and Funk (2012, p. 6) in the Deschutes and Klamath basins indicate the sampled Oregon spotted frog sites are characterized by very small effective population sizes and little genetic variation (i.e., measured as low heterozygosity and low allelic richness).

Blouin *et al.* (2010) performed genetic analyses on Oregon spotted frogs from 23 of the known sites in British Columbia, Washington, and Oregon for variation at 13 microsatellite loci and 298 base pairs of mitochondrial DNA. Their results indicate that *Rana pretiosa* comprised six major genetic groups: (1) British Columbia; (2) the Chehalis drainage in Washington, (3) the Columbia drainage in Washington, (4) Camas Prairie in northern Oregon, (5) the central Cascades of Oregon, and (6) the Klamath basin (Blouin *et al.* 2010, pp. 2184–2185). Within the northern genetic groups, the British Columbia (Lower Fraser River) and Chehalis (Black River) populations form the next natural grouping (Blouin *et al.* 2010, p. 2189). Recently discovered locales in the Sumas, South Fork Nooksack, and Samish Rivers occur in-between these two groups. While no genetic testing has been done on these newly found populations, it is reasonable to assume that they are likely to be closely related to either the British Columbia or Chehalis group, or both, given their proximity and use of similar lowland marsh habitats.

Levels of genetic variation in the Oregon spotted frog groups are low compared to other ranid frogs, suggesting these populations are very small and/or very isolated (Blouin *et al.* 2010, p. 2184). Blouin *et al.* (2010) found a high frequency of mitochondrial DNA private alleles (i.e., an allele found in only one population or geographic location) in the central Cascades and Klamath Basin groups. This finding suggests an historical (rather than recent) isolation between individual groups (Blouin *et al.* 2010, p. 2189). This finding also reinforces microsatellite-based conclusions that gene flow among sites has been very low, even on small geographic scales (Blouin *et al.* 2010, p. 2188). Recent work by Robertson and Funk (2012) in the Deschutes and Klamath basins reinforces the Blouin *et al.* (2010)

findings. Due to Oregon spotted frogs' highly aquatic habits, connectivity between Oregon spotted frog sites depends on the connectivity of streams, rivers, and lakes. Gene flow (based on both microsatellite and mitochondrial analyses) is extremely low beyond 6 mi (10 km) (Blouin *et al.* 2010, pp. 2186, 2188) and most Oregon spotted frog populations are separated by more than 6.2 miles (mi) (10 kilometers (km). Therefore, Blouin *et al.* (2010, p. 2189), and Robertson and Funk (2012, p. 5) hypothesize that low aquatic connectivity and small isolated populations are important causes of the low genetic diversity within sites and the high genetic differentiation among sites.

Life-History

Male Oregon spotted frogs are not territorial and often gather in large groups of 25 or more individuals at specific locations (Leonard *et al.* 1993, p. 132). Breeding occurs in February or March at lower elevations and between early April and early June at higher elevations (Leonard *et al.* 1993, p. 132). Males and females separate soon after egg-laying with females returning to fairly solitary lives. Males often stay at the breeding site, possibly for several weeks, until egg-laying is completed (McAllister and Leonard 1997, p. 13) (The term egg-laying site or habitat is used interchangeably with breeding site or habitat throughout this rule).

Oregon spotted frogs' eggs are extremely vulnerable to desiccation and freezing as a result of the species' laying habits. Females may deposit their egg masses at the same locations in successive years, indicating the sites may have unique characteristics. For example, some marked males and females at Sunriver (Upper Deschutes River, OR) returned to the same breeding site for 3 or more years (Bowerman 2006, pers. comm.). Further, at several sites in Oregon and Washington, the same egg-laying locations have been used for more than a decade (Hayes 2008, pers. comm.). Although egg masses are occasionally laid singly, the majority of egg masses are laid communally in groups of a few to several hundred (Licht 1971, p. 119; Nussbaum *et al.* 1983, p. 186; Cooke 1984, p. 87; Hayes *et al.* 1997 p. 3; Engler and Friesz 1998, p. 3). They are laid in shallow, often temporary, pools of water; gradually receding shorelines; on benches of seasonal lakes and marshes; and in wet meadows. These sites are usually associated with the previous year's emergent vegetation, are generally no more than 14 in (35 centimeters (cm)) deep (Pearl and Hayes 2004, pp. 19–20), and most of these sites dry up later in the season (Joe Engler, FWS, pers. comm. 1999). Shallow water is easily warmed by the sun, and warmth hastens egg development (McAllister and Leonard 1997, p. 8). However, laying eggs in shallow water can result in high mortality rates for eggs and hatchling larvae due to desiccation or freezing.

Licht (1974, pp. 617–625) documented the highly variable mortality rates for spotted frog life-history stages in marsh areas in the lower Fraser Valley, BC: embryos (30 percent), tadpoles (99 percent), and post-metamorphic (after the change from tadpole to adult, or "metamorphosis") frogs (95 percent). Licht (1974, p. 625) estimated mortality of each life stage and predicted only a 1 percent chance of survival of eggs to metamorphosis, a 67 percent chance of juvenile survival for the first year, and a 64 percent adult annual survival with males having a higher mortality rate than females. An average adult between-year survival of 37 percent was estimated by a mark-recapture study at Dempsey Creek in Washington between 1997 and 1999 (Watson *et al.* 2000, p. 19).

Adult Oregon spotted frogs begin to breed by 1–3 years of age, depending on sex, elevation, and latitude. Males may breed at 1 year at lower elevations and latitudes but generally breed at 2 years of age. Females breed by 2 or 3 years of age, depending on elevation and latitude. Longevity of the species is not well understood; however, there are multiple examples of Oregon spotted frogs living beyond 7 years of age (Watson et al. 2000, p. 21; Kelly McAllister, WDOT 2008, pers. comm.; Jill Oertley, U.S. Forest Service 2005, pers. comm.; Pearl 2005, pers. comm.).

Egg-laying can begin as early as February in British Columbia and Washington and as late as early June in the higher elevations. Tadpoles metamorphose into froglets (tiny frogs) (about 16–43 mm (0.6–1.75 in) in length) during their first summer (Leonard *et al.* 1993, p. 132; Pearl and Bowerman 2005, pers. comm.). Tadpoles are grazers, having rough tooth rows for scraping plant surfaces and ingesting plant tissue and bacteria. They also consume algae, detritus, and probably carrion (Licht 1974, p. 624; McAllister and Leonard 1997, p. 13).

Post-metamorphic Oregon spotted frogs are opportunistic predators that prey on live animals, primarily insects, found in or near the water. Important prey groups of adult frogs include leaf beetles (Chrysomelidae), ground beetles (Carabidae), spiders (Arachnidae), rove beetles (Staphylinidae), syrphid flies (Syrphidae), long-legged flies (Dolichopodidae), ants (Formicidae), water striders (Gerridae), spittlebugs (Cercopidae), leaf hoppers (Cicadellidae), aphids (Aphididae), dragonflies and damsel flies (Odonates), and yellowjackets (Vespidae) (Licht 1986a, pp. 27–28). Oregon spotted frogs also eat adult Pacific tree frogs (*Pseudacris regilla*), small red-legged frogs, and newly metamorphosed red-legged frogs and western toad (*Bufo boreas*) juveniles (Licht 1986a, p. 28; Pearl and Hayes 2002, pp. 145–147; Pearl *et al.* 2005a, p. 37).

Similar to many North American pond-breeding anurans (belonging to the Order Anura, which contains all frogs), predators can strongly affect the abundance of larval and post-metamorphic Oregon spotted frogs. The heaviest losses to predation are thought to occur shortly after tadpoles emerge from eggs, when they are relatively exposed and poor swimmers (Licht 1974, p. 624). However, the odds of survival appear to increase as tadpoles grow in size and aquatic vegetation matures, thus affording cover (Licht 1974, p. 624). Adult Oregon spotted frogs have a number of documented and potential natural predators, including garter snakes (*Thamnophis* species (spp.)), great blue herons (*Ardea herodias*), green-backed herons (*Butorides virescens*), American bitterns (*Botaurus lentiginosus*), belted kingfishers (*Ceryle alcyon*), sandhill cranes (*Grus canadensis*), raccoons (*Procyon lotor*), coyotes (*Canis latrans*), striped skunks (*Mephitis mephitis*), mink (*Mustela vison*), river otters (*Lutra canadensis*), and feral cats (*Felis domesticus*) (McAllister and Leonard 1997, p. 13; Hayes *et al.* 2005, p. 307; Hayes *et al.* 2006, p. 209). Tadpoles may be preyed upon by numerous vertebrate predators including belted kingfishers, hooded mergansers (*Lophodytes cucullatus*), common garter snakes (*Thamnophis sirtalis*), western terrestrial garter snakes (*Thamnophis elegans*), larval and adult roughskin newts (*Taricha granulosa*), larval northwestern salamanders (*Ambystoma gracile*), cutthroat trout (*Oncorynchus clarki*), Olympic mudminnows (*Novumbra hubbsi*), and three-spined sticklebacks (*Gasterosteus aculeatus*) (McAllister and Leonard 1997, p. 14).

Subadult Oregon spotted frogs have been observed within dense aggregations of recently hatched Oregon spotted frog tadpoles, and stomach flushing verified that these subadult Oregon spotted frogs had consumed (cannibalized) recently hatched conspecific (belonging to the same

species) tadpoles (K. McAllister, pers. comm. 2008). Invertebrate predators include dytiscid beetles (*Dytiscus* spp.), giant water bugs (*Lethocerus americanus*), backswimmers (*Notonecta undulata* and *N. kirbyi*), water scorpions (*Ranatra* sp.), dragonfly nymphs (*Odonata*), and worm-leeches (*Arhynchobdellida*) (McAllister and Leonard 1997, p. 14). Leeches and other invertebrates, roughskin newts, and northwestern salamanders are likely Oregon spotted frog egg predators (McAllister and Leonard 1997, p. 14).

The introduction of nonnative species into the historical range of the Oregon spotted frog is believed to have contributed to the decline of this and other species of frogs (Hayes and Jennings 1986, pp. 491–492, 494–496; Hayes 1994, p. 5; 61 FR 25813; McAllister and Leonard 1997, pp. 25–26; Pearl *et al.* 2004, pp. 17–18). Bullfrogs (*Lithobates catesbeiana*) are known predators of Oregon spotted frogs (R. Haycock and R.A. Woods, unpubl. data, 2001 cited in COSFRT 2012, p. 19), and introduced fish such as brook trout (*Salvelinus fontinalis*) and centrarchids (*Micropterus* and *Lepomis* spp.) are also likely predators (Pearl et al. 2009a, p. 140).

Habitat

Watson *et al.* (2003, p. 298) summarized the conditions required for completion of the Oregon spotted frog life cycle as shallow water areas for egg and tadpole survival, perennially deep, moderately vegetated pools for adult and juvenile survival in the dry season, and perennial water for protecting all age classes during cold wet weather.

The Oregon spotted frog inhabits emergent wetland habitats in forested landscapes, although it is not typically found under forest canopy. Historically, this species was also associated with lakes in the prairie landscape of the Puget lowlands (McAllister and Leonard 1997, p. 16). This is the most aquatic native frog species in the Pacific Northwest, as all other species have a terrestrial life stage. It is almost always found in or near a perennial body of water, such as a spring, pond, lake, sluggish stream, irrigation canal, or roadside ditch (Engler 1999, pers. comm.). The observation that extant Oregon spotted frog populations tend to occur in larger wetlands led Hayes (1994, Part II pp. 5, 7) to hypothesize that a minimum size of 9 acres (ac) (4 hectares (ha)) may be necessary to reach suitably warm temperatures and support a large enough population to persist despite high predation rates. However, Oregon spotted frogs also occupy smaller sites and are known to occur at sites as small as 2.5 ac (1 ha) and as large as 4,915 ac (1,989 ha) (Pearl and Hayes 2004, p. 11). Oregon spotted frogs have been found at elevations ranging from near sea level in the Puget Trough lowlands in Washington to approximately 5,000 feet (ft) (1,500 meters (m)) in the Oregon Cascades in western Oregon (Dunlap 1955, p. 316; Hayes 1997, p. 16; McAllister and Leonard 1997, pp. 8–10).

Oregon spotted frogs can make use of a variety of pond types as long as there is sufficient vegetation and seasonal habitat available for breeding, summer feeding, and overwintering (Pearl et al. 2009a, p. 144). Oregon spotted frogs at Dempsey Creek in Washington selected areas of relatively shallow water with less emergent vegetation but more submergent vegetation than adjacent habitats. They avoided dry, upland areas of pasture grass (Watson *et al.* 1998, p. 10; 2000, pp. 54–57; 2003, p. 297). Radio telemetry data indicates Oregon spotted frogs at Dempsey Creek also make extensive use of scrub-shrub wetland habitats adjacent to forested uplands (Risenhoover *et al.* 2001a, p. 13).

Oregon spotted frogs breed in shallow pools (2–12 in (5–30 cm) deep) that are near flowing water, or which may be connected to larger bodies of water during seasonally high water or at flood stage. Characteristic vegetation includes grasses, sedges, and rushes, although eggs are laid where the vegetation is low or sparse, such that vegetation structure does not shade the eggs (McAllister and Leonard 1997, p. 17). While native vegetation is the preferred substrate, the frog may also use short, manipulated canarygrass/native vegetation mix (J. Engler, pers. comm. 1999). Full solar exposure seems to be a significant factor in breeding habitat selection (McAllister and White 2001, p. 12; Pearl and Hayes 2004, p. 18). The availability of the unique characteristics of traditional egg-laying sites is limited, and adults may have limited flexibility to switch sites (Hayes 1994, p. 19). This may make the Oregon spotted frog particularly vulnerable to modification of egg-laying sites (Hayes 1994, p. 19).

After breeding, during the dry season, Oregon spotted frogs move to deeper, permanent pools or creeks (Watson *et al.* 2003, p. 295). They are often observed near the water surface basking and feeding in beds of floating and submerged vegetation (Watson *et al.* 2003, pp. 292–298; Pearl *et al.* 2005a, pp. 36–37).

Known overwintering sites are associated with flowing systems, such as springs and creeks, that provide well-oxygenated water (Hallock and Pearson 2001, p. 15; Hayes *et al.* 2001, pp. 20–23, Tattersall and Ultsch 2008, pp. 123, 129, 136) and sheltering locations protected from predators and freezing (Risenhoover *et al.* 2001b; Watson *et al.* 2003, p. 295). Oregon spotted frogs apparently burrow in mud, silty substrate, clumps of emergent vegetation, woody accumulations within the creek, and holes in creek banks when inactive during periods of prolonged or severe cold (Watson *et al.* 2003, p. 295; Hallock and Pearson 2001, p. 16; McAllister and Leonard 1997, p. 17); however, they are intolerant of anoxic (absence of dissolved oxygen) conditions and are unlikely to burrow into the mud for more than a day or two (Tattersall and Ultsch 2008, p. 136) because survival under anoxic conditions is only a matter of 4–7 days (Tattersall and Ultsch 2008, p. 126). This species remains active during the winter in order to select microhabitats that can support aerobic metabolism and allow it to evade predators (Hallock and Pearson 2001, p. 15; Hayes *et al.* 2001, pp. 20–23; Tattersall and Ultsch 2008, p. 136). In central Oregon, where winters generally result in ice cover over ponds, Oregon spotted frogs follow a fairly reliable routine of considerable activity and movement beneath the ice during the first month following freeze-up. Little movement is observed under the ice in January and February, but activity steadily increases in mid-March, even when ice cover persists (Bowerman 2006, pers. comm.). Radio-tracked frogs remained active all winter, even under the ice at Trout Lake NAP (Hallock 2009, pers comm.) and Conboy National Wildlife Refuge (NWR) (Hayes *et al.* 2001, pp. 16–19).

Results of a habitat utilization and movement study at Dempsey Creek in Washington indicate that adult frogs made infrequent movements between widely separated pools and more frequent movements between pools in closer proximity (Watson *et al.* 2003, p. 294), but remained within the study area throughout the year. Home ranges averaged 5.4 ac (2.2 ha), and daily movement was 16–23 ft (5–7 m) throughout the year (Watson *et al.* 2003, p. 295). During the breeding season (February–May), frogs used about half the area used during the rest of the year. During the dry season (June–August), frogs moved to deeper, permanent pools, and occupied the smallest range of any season, then moved back toward their former breeding range during the wet season (September–January) (Watson *et al.* 2003, p. 295). Individuals equipped with radio transmitters stayed within 2,600 ft (800 m) of capture

locations at the Dempsey Creek site (Watson *et al.* 1998, p. 10) and within 1,312 ft (400 m) at the Trout Lake NAP (Hallock and Pearson 2001, p. 16).

Recaptures of Oregon spotted frogs at breeding locations in the Buck Lake population in Oregon indicated that adults often move less than 300 ft (100 m) between years (Hayes 1998a, p. 9). However, longer travel distances, while infrequent, have been observed between years and within a single year between seasons. Three adult Oregon spotted frogs (one male and two females) marked in a study at Dempsey Creek and the Black River in Washington moved a distance of 1.5 mi (2.4 km) between seasons along lower Dempsey Creek to the creek's mouth from the point where they were marked (McAllister and Walker 2003, p. 6). Adult female Oregon spotted frogs traveled 1,434 ft (437 m) between seasons from their original capture location at the Trout Lake Wetland NAP (Hallock and Pearson 2001, p. 8). Two juvenile frogs at the Jack Creek site in Oregon were recaptured the next summer 4,084 ft (1,245 m) and 4,511 ft (1,375 m) downstream from where they were initially marked, and one adult female moved 9,183 ft (2,799 m) downstream (Cushman and Pearl 2007, p. 13). Oregon spotted frogs at the Sunriver site routinely make annual migrations of 1,640 to 4,265 ft (500 to 1,300 m) between the major egg-laying complex and an overwintering site (Bowerman 2006, pers. comm.).

While these movement studies are specific to Oregon spotted frogs, the number of studies and size of the study areas are limited and haven't been conducted over multiple seasons or years. In addition, the ability to detect frogs is challenging because of the difficult terrain in light of the need for the receiver and transmitter to be in close proximity. Hammerson (2005) recommends that a 3.1-mile (5-km) dispersal distance be applied to all ranid frog species, because the movement data for ranids are consistent. The preponderance of data indicates that a separation distance of several kilometers may be appropriate and practical for delineation of occupancy, despite occasional movements that are longer or that may allow some genetic interchange between distant populations (for example, the 6.2-mi (10-km) distance noted by Blouin *et al.* 2010, pp. 2186, 2188). Accordingly, based on the best available scientific information, we presume that Oregon spotted frog habitats are connected for purposes of genetic exchange when occupied/suitable habitats fall within a maximum movement distance of 3.1 mi (5 km).

Historical Range/Distribution

Historically, the Oregon spotted frog ranged from British Columbia to the Pit River basin in northeastern California (Hayes 1997; p. 40; McAllister and Leonard 1997, p. 7). Oregon spotted frogs have been documented at 61 historical localities in 48 watersheds (3 in British Columbia, 13 in Washington, 29 in Oregon, and 3 in California) in 31 sub-basins (McAllister *et al.* 1993, pp. 11–12; Hayes 1997, p. 41; McAllister and Leonard 1997, pp. 18–20; COSEWIC 2011, pp. 12–13) (See Table 1). We are assuming the watersheds that have recently been documented to be occupied were also occupied historically based on their complete disconnect from known-occupied watersheds and the limited dispersal ability of Oregon spotted frog. For the rest of the document, we will describe historical and current range or distribution based on river sub-basins/watersheds. A river sub-basin is equivalent to a 4th field watershed and a hydrologic unit code of 8. A watershed is equivalent to a 5th field watershed and a hydrologic unit code of 10.

TABLE 1—OREGON SPOTTED FROG HISTORICAL AND EXTANT DISTRIBUTION THROUGHOUT RANGE

Location	*Sub-basins *: Watersheds*
British Columbia	• **Lower Fraser River sub-basin** near Sumas Prairie in Abbotsford, Nicomen Island in Matsqui, and in Langley Township. Recently (1996/1997 and 2008) discovered at MD Aldergrove, Maria Slough, Mountain Slough, and Morris Valley.
Washington Counties: Clark, King, Klickitat, Pierce, Skagit, Snohomish, and Thurston.	• **Fraser River sub-basin:** recently discovered (2012) in the Sumas River, a tributary to the Lower Chilliwack River watershed; • **Nooksack River sub-basin:** South Fork Nooksack River (recently discovered (2011 and 2012) in the Black Slough); • **Straits of Georgia sub-basin:** recently discovered (2011 and 2012) along the mainstem of the Samish River; • Lower Skagit River sub-basin: Skagit River-Frontal Skagit Bay and Finney Creek-Skagit River; • Skykomish River sub-basin: Woods Creek-Skykomish River at Monroe; • Duwamish River sub-basin: Lower Green River at Kent; • Lake Washington sub-basin: Lake Washington at Seattle; • Puget Sound (no sub-basin): Chambers Creek-Frontal Puget Sound (Spanaway Lake) and McLane Creek-Frontal Puget Sound (Patterson/Pattison Lake); • Nisqually River sub-basin: Lower Nisqually River-Frontal Puget Sound (Kapowsin); • **Upper Chehalis River sub-basin:** Black River (Demspey Creek, Beaver Creek, Blooms Ditch, and recently discovered in Salmon and Fish Pond Creeks); • Lower Willamette River sub-basin: Salmon Creek-Frontal Columbia River at Brush Prairie, Vancouver, and possibly Burnt Bridge Creek at Orchards; • **Middle Columbia-Hood River sub-basin:** White Salmon River (Trout Lake Creek at Gular and Trout Lake); • **Klickitat River sub-basin:** Middle Klickitat River (Conboy Lake on Outlet, Fraiser, and Chapman Creeks).
Oregon Counties: Multnomah, Clackamas, Marion, Linn, Benton, Jackson, Lane, Wasco, Deschutes, and Klamath.	• Lower Willamette River sub-basin: Johnson Creek; • **Lower Deschutes River sub-basin:** Tygh Creek and White River; • Clackamas River sub-basin: Oak Grove Fork Clackamas River; • Middle Willamette River sub-basin: Mill Creek-Willamette River and Oak Creek; • South Santiam River sub-basin: South Santiam River-Hamilton Creek; • Upper Willamette River sub-basin: Muddy Creek; • **McKenzie River sub-basin:** Upper McKenzie River and South Fork McKenzie River; • **Middle Fork Willamette River sub-basin:** Salt Creek-Willamette River; • **Upper Deschutes River sub-basin:** Deschutes River-McKenzie Canyon, Deschutes River-Pilot Butte, Deschutes River-Fall River, and Deschutes River-Browns Creek; • **Little Deschutes River sub-basin:** Upper Little Deschutes River, Middle Little Deschutes River, Lower Little Deschutes River, Long Prairie, and Crescent Creek;

TABLE 1—OREGON SPOTTED FROG HISTORICAL AND EXTANT DISTRIBUTION THROUGHOUT RANGE—Continued

Location	*Sub-basins *: Watersheds*
California Counties: Modoc, Shasta, and Siskiyou.	• **Williamson River sub-basin:** Klamath Marsh-Jack Creek, West of Klamath Marsh, and Williamson River above Klamath Marsh. • Sprague River sub-basin: North Fork Sprague River and Sprague River above Williamson; • **Upper Klamath Lake sub-basin:** Wood River and Klamath Lake watersheds; • Upper Klamath sub-basin: Spencer Creek and Jenny Creek; • Lost River sub-basin: Lake Ewauna-Upper Klamath River. • Lost River sub-basin: Lower Klamath Lake. • Upper Pit River sub-basin: Pine Creek-South Pit River (near Alturas). • Lower Pit River sub-basin: Town of Pittville-Pit River (near Fall River Mills).

** Bolded sub-basins represent the sub-basins with extant locales. Oregon spotted frogs may not be extant in all of the historic watersheds within these sub-basins.*

Current Range/Distribution

Currently, the Oregon spotted frog is found from extreme southwestern British Columbia south through the Puget Trough, and in the Cascades Range from south-central Washington at least to the Klamath Basin in southern Oregon. Oregon spotted frogs occur in lower elevations in British Columbia and Washington and are restricted to high elevations in Oregon (Pearl et al. 2010 p. 7). In addition, Oregon spotted frogs currently have a very limited distribution west of the Cascade crest in Oregon, are considered to be extirpated from the Willamette Valley in Oregon (Cushman et al. 2007, p. 14), and may be extirpated in the Klamath and Pit River basins of California (Hayes 1997, p. 1).

In British Columbia. Oregon spotted frogs no longer occupy the locations documented historically, but they currently are known to occupy four disjunct locations in a single sub-basin, the Lower Fraser River (Canadian Oregon Spotted Frog Recovery Team 2012, p. 6).

In Washington, Oregon spotted frogs are known to occur only within six sub-basins/watersheds: the Sumas River, a tributary to the Lower Fraser River; the Black Slough in the lower South Fork Nooksack River, a tributary of the Nooksack River; Samish River; Black River, a tributary of the Chehalis River; Outlet Creek (Conboy Lake), a tributary to the Middle Klickitat River; and Trout Lake Creek, a tributary of the White Salmon River. The Klickitat and White Salmon Rivers are tributaries to the Columbia River. The Oregon spotted frogs in each of these sub-basins/watersheds are isolated from frogs in other sub-basins.

A reintroduction project was initiated in 2008 at Dailman Lake in Pierce County on Joint Base Lewis-McChord Military Reservation. This sub-basin (Nisqually River) was historically occupied by Oregon spotted frogs with documented occurrences at Spanaway Lake, Spanaway Pond, Little Spanaway Lake and Kapowsin (McAllister and Leonard 1997, pp. 18–19). Eggs were collected from the Black River and the Conboy Lake Oregon spotted frog breeding locations, captive reared until metamorphosis, and released in the fall or subsequent spring. Through 2011, researchers collected 7,870 eggs and released 3,355 frogs (Tirhi and Schmidt 2011, pp. 51–53). Surveys in April 2011 found 3 verified Oregon spotted frog egg masses and 11 suspected egg masses: However, breeding was not detected in 2012. This effort is ongoing and the efficacy and viability of a breeding Oregon spotted frog population being established in this area is undetermined. The reintroduction efforts at this location are not likely to facilitate Oregon spotted frog recovery in this extirpated sub-basin because of the extent of development at the historical locales and lack of suitable habitat; therefore, this location will not be discussed further.

In Oregon, Oregon spotted frogs are known to occur only within eight sub-basins: Lower Deschutes River, Upper Deschutes River, Little Deschutes River, McKenzie River, Middle Fork Willamette, Upper Klamath, Upper Klamath Lake, and the Williamson River. The Oregon spotted frogs in most of these sub-basins are isolated from frogs in other sub-basins, although Oregon spotted frogs in the lower Little Deschutes River are aquatically connected with those below Wickiup Reservoir in the Upper Deschutes River sub-basin. Oregon spotted frog distribution west of the Cascade Mountains in Oregon is restricted to a few lakes in the upper watersheds of the McKenzie River and Middle Fork Willamette River sub-basins, which represent the remaining 2 out of 12 historically occupied sub-basins.

In California, this species has not been detected since 1918 (California Academy of Science Museum Record 44291) at historical sites and may be extirpated (Hayes 1997 pp. 1, 35). However, there has been little survey effort of potential habitat since 1996, so this species may still occur in California.

Population Estimates and Status

Of the 61 historical localities where the species' previous existence can be verified (e.g., museum specimens, photographs, reliable published records), only 13 were confirmed as being occupied in studies conducted in the 1990s (Hayes 1997, p. 1; McAllister and Leonard 1997, p. 20). Hayes visited historical localities one to four times, with a minimum of 2 hours devoted to site visits for localities that could be identified precisely. For sites where the location was imprecisely known, he searched three to six points in the area that possessed favorable habitat, for 20 minutes to 3 hours, depending on site size. He also visited sites that were judged to have a potentially high likelihood of having Oregon spotted frogs (i.e., within the historical range, consistent with elevations documented for verifiable specimens, and within suitable habitat) (Hayes 1997; p. 6). Based on those studies, Hayes (1997. p. 1) estimated the species may no longer occur in 76 to 90 percent of its historical range. Although this estimated loss of historical localities does not take into account the localities found since 2000, the current range of the Oregon spotted frog is significantly smaller than the historical range, based on the best available scientific and commercial information.

Egg mass counts are believed to be a good metric of adult population size and are the most time-efficient way to estimate population size (Phillipsen *et al.* 2009, p. 7). Adult females lay one egg mass per year, and the breeding period occurs within a reliable and predictable timeframe each year (McAllister 2006, pers. comm.). Egg mass numbers are collected in a single survey timed to coincide with the end of the breeding season, when egg laying should be

complete and the egg mass count represents a reliable estimate of total egg masses. Because one egg mass is approximately equivalent to one breeding female plus one to two adult males, a rough estimate of adult population size can be made if a thorough egg mass census is completed (Phillipsen *et al.* 2009, p. 7). Using egg mass counts to estimate population size has some weaknesses. For example, researchers have uncertainties about whether adult females breed every year and find difficulty in distinguishing individual egg masses in large communal clusters. However, a minimum population estimate can be derived from the total egg mass count multiplied by two (one egg mass equals two adult frogs). While there are weaknesses in these estimates, as discussed above, they are the best estimates available for Oregon spotted frog numbers.

Egg mass counts, as currently conducted at most sites, do not allow for evaluation of trends within a site nor between sites because surveys are not standardized. Survey effort, area coverage, and timing can differ between years at individual sites. In addition, method of survey can differ between years at individual sites and differs between sites. Because of the weaknesses associated with the egg mass counts, site estimates derived from egg mass counts are considered to be a minimum estimate and generally should not be compared across years or with other sites. However, some breeding locations have been surveyed in a consistent manner (in some cases by the same researcher) and for enough years that trend data are available and considered to be reliable. Trend information is provided in the following sub-basin summaries for the locations where the information is available.

For the purposes of this document, the terms 'location' and 'site' simply refer to the general locations where breeding has been observed. In some cases, a site may be equivalent to an Oregon spotted frog population (for example, Penn Lake). In other cases, a site may include multiple breeding locations within wetland complexes where hydrological connections may facilitate movement between breeding areas, but where movement patterns and genetic conditions are undetermined within the complexes (for example, Klamath Marsh NWR. Accordingly, a site should not be interpreted to be a population. Because of the lack of complete information between breeding locations, populations were not specifically identified for this status review, and the focus of our analysis regarding the status of Oregon spotted frogs was within the individual river sub-basins.

The following summarizes the best available scientific and commercial information available regarding populations within the currently occupied river sub-basins in British Columbia, Washington, and Oregon. We used multiple data sources, including various unpublished reports, databases, and spreadsheets provided by our partner agencies. These sources are identified in the following sections as "multiple data sources" and are included in our literature cited list, which is included as supplementary information on *http://www.regulations.gov* for this proposed rule. These sources are available upon request from the Washington Fish and Wildlife Office (see **ADDRESSES**). In most sub-basins, trend information regarding the collective status of the populations within the sub-basin is limited or not available, though it is presented below where available. The status of a sub-basin may be undetermined because the Oregon spotted frog presence has only recently been identified, the trend information is uncertain, or sufficient survey information is not available to indicate a trend. However, when viewed at the range-wide scale, the Oregon spotted frog has been extirpated from most of its historical range, and the threat of current and future impacts to the Oregon spotted frog occurs over the entire range of the species. Ongoing threats have significantly reduced the overall extent and distribution of suitable habitat for the Oregon spotted frog, as discussed in "Summary of Factors Affecting the Species" below.

British Columbia

Currently, Oregon spotted frogs are known to occur only within four sites in the Lower Fraser River Basin. Of the four sites, Maintenance Detachment Aldergrove (MD Aldergrove) is nearing, or may have reached extirpation, as no egg masses have been discovered at the site since 2006; Mountain Slough appears to be stable; Maria Slough may be declining; and there is limited data for the recently discovered Morris Valley site (COSEWIC 2011, p. v). Estimates from the three most well-studied populations (MD Aldergrove, Maria Slough, Mountain Slough) indicate a population decline of 35 percent during the period 2000–2010 (COSEWIC 2011, p. 32), and the most recent egg mass counts indicate the minimum population size for all of British Columbia is fewer than 350 adults (COSEWIC 2011, pp. 27–30). One extant population is near extinction, and the remaining populations are small and vulnerable to disturbance and stochastic events. Extirpation of the MD Aldergrove population would result in a reduction of 76 percent of the extent of Oregon spotted frog in the Lower Fraser River (COSEWIC 2011, pp. vii–ix). Therefore, populations of Oregon spotted frogs in the Lower Fraser River are declining.

Washington

In Washington, the Oregon spotted frog was historically found in the Puget Trough from the Canadian border to the Columbia River, and east to the Washington Cascades (McAllister *et al.* 1997, p. vii). Current distribution is limited to four watersheds in the Puget Trough, three that drain to Puget Sound and one that drains to the Pacific Ocean, and two watersheds in the southeast Cascades that drain to the Columbia River. In 1997, the locations for 11 historical populations in Washington were verified using museum specimen and published records, and only 1 historically known population and 2 recently discovered populations were known to remain in Washington in 1997 (McAllister *et al.* 1997, p. vii). The authors also stated that past populations of the Oregon spotted frog in Washington are largely undocumented (McAllister *et al.* 1997, p. 18). Current population estimates are based on the 2012 census of egg masses at all known extant breeding areas. Based on these estimates, the minimum population in Washington was at least 7,368 breeding adults in 2012.

Trend data are limited; however, the Oregon spotted frog population in the Middle Klickitat River (Conboy Lake) appears to be declining (see below for further information). The population trend within the rest of the occupied sub-basins is unknown, although some individual breeding areas may be stable or extirpated (for example, 110th Ave in the Black River). More detailed discussions of Washington's occupied sub-basins/watersheds are provided below.

Lower Chilliwack River (Sumas River)—In 2012, one Oregon spotted frog breeding area was found on a privately owned dairy farm on a small tributary to the Sumas River (Bohannon *et al.* 2012). The Sumas River is a tributary to the Lower Fraser River, along which the British Columbia breeding areas occur. However, the breeding area on the Sumas River is more than 20 mi (35 km) upstream of the confluence with the Fraser River, and separated by unsuitable aquatic habitat. Therefore, an aquatic connection to the British Columbia

breeding areas is not likely (COSEWIC 2011, p. 12). Fewer than 50 egg masses (<100 adults) were found during the 2012 surveys, however, suitable habitat within the Sumas River has not been surveyed extensively (Bohannon *et al.* 2012) and the full extent of Oregon spotted frog distribution and abundance has not been determined.

South Fork Nooksack River—In 2011 and 2012, Oregon spotted frog breeding areas were found on privately owned parcels in the Black Slough, a tributary of the South Fork Nooksack River. On one parcel, the egg-laying habitat was in off-channel wetlands dominated by reed canarygrass (*Phalaris arundinacea*) and recent shrub plantings. Egg-laying areas on other parcels were located within former pasture lands that had been planted with trees and fenced within the last 2 or 3 years under the Conservation Reserve Enhancement Program (CREP) to eliminate grazing and improve water quality (Bohannon *et al.* 2012). At least 230 adults (based on 2012 surveys) are associated with the known breeding areas along the Black Slough; however, this area has not been surveyed extensively (Bohannon *et al.* 2012), and the full extent of Oregon spotted frog distribution and abundance has not been determined.

Samish River—In 2011 and 2012, Oregon spotted frog breeding areas were found on privately owned parcels along the upper reaches of the Samish River. All of the breeding areas are seasonally flooded grazed or formerly grazed pasture lands that are predominantly reed canarygrass (Bohannon *et al.* 2012). At least 1,220 adults (based on 2012 surveys) are associated with the known breeding areas along the Samish River; however, this area has not been surveyed extensively, and the full extent of Oregon spotted frog distribution and abundance has not been determined.

Black River—Oregon spotted frogs occupy wetlands in the floodplain and tributaries of the upper Black River drainage between Black Lake and the town of Littlerock. They are currently known to occur at two locations within the Black River floodplain (Blooms Ditch near 110th Avenue Bridge and near 123rd Avenue) and in four tributaries: Dempsey Creek, Salmon Creek, Allen Creek, and Beaver Creek (Hallock 2013; WDFW and USFWS multiple data sources). In 2012, a new breeding location was detected along Fish Pond Creek, which flows directly into Black Lake, not Black River. Oregon spotted frog egg-laying areas in the Black River may be isolated from each other and the frogs associated with the Fish Pond Creek may not be hydrologically connected to frogs in the Black River due to the human alteration of the Black Lake drainage pattern. Further investigation of this new location is needed.

The full extent of the population's distribution, abundance, and status in the Black River has not been determined. As of 2012, the Black River adult breeding population comprised at least 1,748 breeding adults (Hallock 2013, p. 27). Oregon spotted frogs in Dempsey Creek have been monitored relatively consistently since the late 1990s. Other breeding areas in the Black River have been monitored inconsistently or are newly found, and surveys to identify additional breeding locations continue. The Dempsey Creek breeding area may be declining, but the trend for the remainder of the occupied areas is undetermined.

White Salmon River-(Trout Lake Creek)—Oregon spotted frogs occupy approximately 1,285 ac (520 ha) of the lower Trout Lake Creek watershed, ranging in elevation 1,960–2,080 ft (597–633 m). In total, as of 2012, a minimum population estimate of 2,124 breeding adults (Hallock 2012) associated with 12 breeding areas have been identified. Two of the breeding areas have been monitored since they were found by Leonard (1997). The other locations have been monitored sporadically since they were discovered. Monitoring of egg mass numbers at two breeding areas within the Trout Lake NAP revealed considerable population volatility and a general pattern of decline from 2001 through 2007 (Hallock 2011, p. 8). During the period of egg mass declines, three events of note occurred that could have influenced frogs at the NAP: Annual precipitation was unusually low, cattle grazing was reduced and then eliminated, and frogs infected with chytrid fungus (*Batrachochytrium dendrobatids* (*Bd*)) were present (Pearl *et al.* 2009b, Hayes *et al.* 2009). While the 2009 and 2010 egg mass counts indicate that Oregon spotted frog numbers may be rebounding within the eastern portions of the NAP, the numbers in the western portion continue to be less than half of the estimates from the 1990s.

Middle Klickitat River (Conboy Lake)—The extent of Conboy Lake wetland complex habitat occupied by Oregon spotted frogs at high water is approximately 7,462 ac (3,020 ha), ranging in elevation 1,804–1,896 ft (550–576 m). This wetland complex comprises two lakebeds that are entirely seasonal (except in wet years) and are joined by Camas Ditch, which flows into Outlet Creek, the main drainage for the system that flows northeast into the Klickitat River. As of 2012, there were a minimum of 1,954 breeding adults in the Conboy Lake wetland complex (Hallock 2013, p. 27). This used to be the largest Oregon spotted frog population throughout the entire range (highest egg mass count 7,018 in year 1998). However, Oregon spotted frog egg mass surveys suggest a continued long-term decline (approximately 86 percent) since 1998 (Hayes and Hicks 2011; Hallock 2013, p. 36). At present, the population trend of Oregon spotted frogs in the Middle Klickitat River is considered to be declining.

Oregon

Population estimates of Oregon spotted frogs in Oregon are primarily based on egg mass surveys conducted in 2011 and 2012 at all known extant sites, and newly discovered occupied areas that had been unsurveyed prior to 2012. Population estimates for the Middle Fork Willamette River sub-basin are based on mark-recapture studies conducted by USGS in 2011, rather than egg mass surveys. Based on these survey data, the minimum population estimate in Oregon consists of approximately 12,847 breeding adults. More detailed discussions of Oregon's occupied sub-basins are provided below and are available in our files.

Lower Deschutes River—Within the Lower Deschutes River sub-basin, a single extant population of Oregon spotted frog occurs at Camas Prairie, an 82-ac (33-ha) marsh located along Camas Creek in the White River watershed. The Camas Prairie Oregon spotted frogs are the most geographically isolated, carry several alleles that are absent or rare in other sites, and have the lowest genetic diversity of Oregon spotted frogs rangewide (Blouin *et al.* 2010, p. 2185). The frogs at this location appear to be the only remaining representatives of a major genetic group that is now almost extinct (Blouin *et al.* 2010, p. 2190). Since 2004, egg mass surveys have been conducted annually, and the population trend has been positive. Based on the 2012 egg mass count, the minimum population size of breeding adults is 152 (Corkran 2012, pers. comm.). Although the population trend has been positive at the single known location, the number of individuals in the population remains low.

Upper Deschutes River—Oregon spotted frogs in the Upper Deschutes River sub-basin occur in high-elevation lakes up to 5,000 ft (1,524 m), wetland ponds, and riverine wetlands and oxbows along the Deschutes River. Approximately 13 known breeding locations are within four watersheds in

the sub-basin: Charleton Creek, Browns Creek, Fall River, and North Unit Diversion Dam. Eight of these breeding locations occur in lakes on the Deschutes National Forest that drain to the Crane Prairie and Wickiup Reservoir complex. Three of the known breeding sites occur downstream of Wickiup Reservoir in riverine wetlands along the Deschutes River, extending to Bend, Oregon.

The consistency of population surveys varies by breeding site, and population trend information is limited. Only two sites within the sub-basin have been monitored consistently since the early 2000s and show an increasing population trend: Dilman Meadow and Sunriver (USGS and J. Bowerman 2000 through 2012 datasets). Trend data are not available for the remainder of populations within the Upper Deschutes River sub-basin. Sunriver, located downstream of Wickiup Reservoir, is the largest population of Oregon spotted frogs within the Deschutes River sub-basin with a population of at least 1,454 breeding adults based on 2012 egg mass surveys (J. Bowerman dataset 2012). A minimum population estimate for the Upper Deschutes River sub-basin (including Sunriver) is approximately 3,530 breeding adults based on surveys since 2006 (USGS 2006 to 2012 and J. Bowerman 2012 datasets).

Little Deschutes River—Oregon spotted frogs are distributed throughout wetland, pond, and riverine habitats in the Little Deschutes River sub-basin, which drains an area of approximately 1,020 square miles (2,600 km^2) and flows north from its headwaters in northern Klamath County to its convergence with the Deschutes River 1 mi (1.2 km) south of Sunriver and approximately 20 mi (32 km) south of Bend, Oregon. The Little Deschutes River is approximately 92 mi (148 km) long. Approximately 23 known breeding locations (as of 2012) are within five watersheds in the sub-basin: Upper, Middle, and Lower Little Deschutes River; Crescent Creek; and Long Prairie. Big Marsh, a 2,000-ac (809 ha) wetland located within headwaters at 4,760 ft (1,451 m) elevation on the Deschutes National Forest, has the largest monitored population of Oregon spotted frogs in the Little Deschutes River sub-basin and possibly rangewide. The estimated population size of Big Marsh based on a 2012 U.S. Forest Service (USFS) egg mass survey is 5,324 breeding adults (male and female) (USFS data 2012).

Because 70 percent of the sub-basin is privately owned and mostly unsurveyed, a population estimate for the entire Little Deschutes River sub-basin is difficult to determine. A minimum population estimate of Oregon spotted frogs based on limited survey data from public and private lands in 2012 is approximately 6,628 breeding adults (including Big Marsh above). However, the vast acreage of wetland complexes and suitable habitat for Oregon spotted frogs along the mainstem Little Deschutes River and Crescent Creek indicate that the frog population within the unsurveyed areas may be well above this estimate. Although the trend of the frog population at Big Marsh appears to be increasing based on USFS surveys from 2002 to 2012 (USFS 2002–2012), the population trend of the remainder of frogs within the sub-basin is undetermined.

McKenzie River—Oregon spotted frogs in the McKenzie River sub-basin are located within the South Fork McKenzie River watershed in an area referred to as the Mink Lake Basin in the wilderness of the Willamette National Forest. There are two known breeding populations: one at Penn Lake and one at an unnamed marsh 0.28 mi (0.45 km) north of Mink Lake. The Penn Lake and Unnamed Marsh populations are about 0.93 mi (1.5 km) apart and are not hydrologically connected via surface water. Mark-recapture monitoring of these populations has been conducted by USGS from 2007 through 2011 (Adams et al. 2007, 2008 p. 13, 2009 p. 14, 2010 p. 14 and 2011 p. 14). A population estimate for breeding adults in the McKenzie River sub-basin, based on mark-recapture efforts by USGS in 2011 is 217 (i.e., 179 at Penn Lake and 38 at Unnamed Marsh) (Adams *et al.* 2011). However, trend has not been estimated for these populations.

Middle Fork Willamette River—Oregon spotted frogs in the Middle Fork Willamette River sub-basin are limited to a single population at Gold Lake and bog, located in the 465-ac (188-ha) Gold Lake Bog Research Natural Area on the Willamette National Forest within the Salt Creek watershed. This population is one of three remaining populations of Oregon spotted frogs west of the Cascade mountain crest in Oregon. The Gold Lake Bog site consists of three small ponds over an area of approximately 3.7 ac (1.5 ha) within a larger bog where three major streams converge. Breeding surveys are periodically conducted by USGS and the Willamette National Forest. However, long-term trend data are lacking for this site. Based on USGS egg mass surveys in 2007, the estimated population size is approximately 1,458 breeding adults (USGS datasets).

Williamson River—Oregon spotted frogs in the Williamson River sub-basin occur in two watersheds: Klamath Marsh/Jack Creek and Williamson River above Klamath Marsh and consist of three populations: Jack Creek, Klamath Marsh NWR, and the Upper Williamson River. Data from 1996 through the present suggests the Jack Creek population is declining, and the survey data from 2000 through the present suggests that the Klamath Marsh population is stable. These watersheds are a mixture of both private and public (BLM, USFS, and NWR) lands and consist of both wetland and riverine potential habitats from 4,500 to 5,200 ft (1,371–1,585 m) in elevation. As of 2011, the minimum population estimate for the sub-basin is approximately 376 breeding individuals (male and female) (KMNWR 2011, USFS 2012, USGS multiple datasets). Permission to survey adjacent private lands has not been obtained, however, the private lands surrounding the public lands appear to have suitable habitat and likely contain additional breeding complexes and individuals.

Upper Klamath Lake—Oregon spotted frogs in the Upper Klamath Lake sub-basin occupy two watersheds that flow into Upper Klamath Lake: Klamath Lake and Wood River. There are four populations in this sub-basin: Crane Creek, Fourmile Creek, Sevenmile Creek, the Wood River channel and the adjacent but separate BLM Wood River canal. These populations occur in both riverine and wetland habitats. Historically, these two watersheds were hydrologically connected. Survey efforts on Fourmile Creek, Sevenmile Creek, and the Wood River channel have been sporadic while Crane Creek and the BLM Wood River canal have been surveyed annually. These data suggest that there is still insufficient information to obtain population trends for all but the BLM Wood River canal population, which is declining. As of 2011, the minimum population estimate for the sub-basin is approximately 374 breeding individuals (male and female) (USGS multiple datasets, BLM multiple datasets). Permission to survey adjacent private lands has not been obtained, however, the private lands surrounding the known populations appear to have suitable habitat and likely contain additional breeding complexes and individuals. Trend data are lacking for three out of four populations in the Upper Klamath Lake.

Upper Klamath—Oregon spotted frogs in the Upper Klamath sub-basin occupy two lacustrine habitats: Parsnip Lakes in Jackson County and Buck Lake in Klamath County. Both of these sites are

isolated hydrologically by great distances (>20 mi (32 km)) and hydrological barriers (inhospitable habitat and dams) to other sites in the Klamath Basin. Historical surveys in this sub-basin resulted in a population estimate of about 1,170 adults (range of <0 to 2,379, 95 percent CI) (Hayes 1998a, p. 10 and Parker 2009, p. 4). Trend data is lacking for Parsnip Lakes population in the Upper Klamath sub-basin, but recent surveys conducted at Buck Lake have documented small numbers of egg masses (38 egg masses in 2010, or the equivalent of 76 breeding individuals (male and female) and 18 egg masses at Parsnip Lakes, or 36 breeding individuals (male and female) (BLM 2012). Survey data for the Upper Klamath sub-basin suggests that the Buck Lake population is in decline. However, there is insufficient survey data information to determine the population trend of the Parsnip Lakes population. The minimum population estimate for this sub-basin is currently (2011) estimated to be 112 breeding individuals suggesting drastic population declines since 1998.

Summary of Current Population Range and Trend

Oregon spotted frogs may no longer occur in as much as 90 percent of their historically documented range, including all of the historical localities in California (i.e., 90 percent of the historical areas are no longer occupied). Currently, the Oregon spotted frog is found in 15 sub-basins ranging from extreme southwestern British Columbia south through the Puget Trough, and in the Cascades Range from south-central Washington at least to the Klamath Basin in Oregon. Oregon spotted frogs occur in lower elevations in British Columbia and Washington and are restricted to higher elevations (i.e., 4,000 to 5,200 ft (1,219 to 1,585 m) in Oregon. In addition, Oregon spotted frogs currently have a very limited distribution west of the Cascade crest in Oregon and are considered to be extirpated from the Willamette Valley.

In most sub-basins, trend information regarding the collective status of the populations within the sub-basin is limited or not available. The best available scientific and commercial information available indicates the trend is undetermined for Oregon spotted frog populations in 13 of the sub-basins and is declining in the Lower Fraser River and Middle Klickitat sub-basins. Threats to the remaining populations are ongoing or increasing, however, as described below.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these threats/factors is discussed below.

Threats for the Oregon spotted frog were assessed by breeding locations and occupied watersheds, then summarized by occupied sub-basin. Each of the five threat categories were summarized by sub-basin using the unified threats classification system (loosely based on the IUCN–CMP (World Conservation Union–Conservation Measures Partnership)), best available data, and best professional judgment. We summarized each occupied sub-basin for scope, severity, impact, timing, and stress, to ensure our determination would be based on the best scientific and commercial data available, as required under section 4(b)(1)(A). Scope is the proportion of the occupied area within the sub-basin that can reasonably be expected to be affected. Severity is the level of damage to the species from the threat that can reasonably be expected. Impact summarizes the degree to which a species is observed, inferred, or suspected to be directly or indirectly affected and is based on the combination of the severity and scope rating (for example, if the severity and scope ratings were both high, then the impact rating was high). Timing is the immediacy of the threat (i.e., is the threat ongoing, could happen in the short term, or is only in the past). Stress is the key ecological, demographic, or individual attribute that may be impaired or reduced by a threat. The completed analysis (Threats Synthesis Rangewide Analysis) is available at *http://www.regulations.gov* and *http://www.fws.gov/wafwo*. The syntheses by threat categories are included in the following threat factor discussions.

Large historical losses of wetland habitat have occurred across the range of the Oregon spotted frog. Wetland losses are estimated from between 30 to 85 percent across the species range with the greatest percentage lost having occurred in British Columbia. These wetland losses have directly influenced the current fragmentation and isolation of remaining Oregon spotted frog populations.

Loss of natural wetland and riverine disturbance processes as a result of human activities has and continues to result in degradation of Oregon spotted frog habitat. Historically, a number of disturbance processes created early successional wetlands favorable to Oregon spotted frogs throughout the Pacific Northwest: (1) Rivers freely meandered over their floodplains, removing trees and shrubs and baring patches of mineral soil; (2) beavers created a complex mosaic of aquatic habitat types for year-round use; and (3) summer fires burned areas that would be shallow water wetlands during the Oregon spotted frog breeding season the following spring. Today, all of these natural processes are greatly reduced, impaired, or have been permanently altered as a result of human activities, including stream bank, channel, and wetland modifications; operation of water control structures (e.g., dams and diversions); beaver removal; and fire suppression.

The historical loss of Oregon spotted frog habitats and lasting anthropogenic changes in natural disturbance processes are exacerbated by the introduction of reed canarygrass, nonnative predators, and potentially climate change. In addition, current regulatory mechanisms and voluntary incentive programs designed to benefit fish species have inadvertently led to the continuing decline in quality of Oregon spotted frog habitats in some locations. The current wetland and stream vegetation management paradigm is generally a no-management or restoration approach that often results in succession to a tree- and shrub-dominated community that unintentionally degrades or eliminates remaining or potential suitable habitat for Oregon spotted frog breeding. Furthermore, incremental wetland loss or degradation continues under the current regulatory mechanisms. If left unmanaged, these factors are anticipated to result in the eventual elimination of remaining suitable Oregon spotted frog habitats or populations. The persistence of habitats required by the species is now largely management dependent.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Threats to the species' habitat include changes in hydrology due to construction of dams and human-related alterations to seasonal flooding, introduction of nonnative plant and animal species, vegetation succession and encroachment, poor water quality, livestock grazing (in some circumstances), and residential and commercial development.

Habitat losses and alterations affect amphibian species in a variety of ways, including reducing or eliminating immigration through losses of adjacent populations (see "Factor E") and effects on critical aspects of the habitat (Hayes and Jennings 1986, pp. 492–494). These critical aspects include suitable egg-laying and nursery sites, refuges from predation or unfavorable environmental conditions, and suitable temperatures necessary for egg laying, growth, and development (Hayes and Jennings 1986, pp. 492–494).

Because Oregon spotted frogs have specific habitat requirements, they are particularly vulnerable to habitat alterations: (1) A restricted number of communal egg-laying locations are used year after year; (2) the species' warm water microhabitat requirement results in habitat overlap with introduced warm water fish species and other warm water fauna that prey on Oregon spotted frogs (for example, bullfrogs); (3) the availability of suitable warm water habitat, a requirement in the active season, is generally limited in the cool climate of the Pacific Northwest; (4) the species is vulnerable to the loss or alteration of springs used for overwintering; and (5) their habitat requirements (for example, spatial structure) for overwintering, active season, and breeding habitats are more complex than for other frog species (Hayes *et al.* 1997, p. 4). In addition, breeding habitat is arguably the single most important habitat component for many aquatic-breeding amphibians because amphibian embryos and larvae depend on aquatic habitats for survival (Leonard 1997, p. 1).

Loss of Wetlands

British Columbia—Extensive diking of river ways and draining of Sumas Lake for conversion to agriculture significantly modified drainage patterns and resulted in loss of associated wetlands in the Fraser River lowlands of British Columbia (COSEWIC 2011, p. 20). Boyle *et al.* (1997, p. 190) estimated an 85 percent loss of habitat types preferred by Oregon spotted frogs (fen, swamp/bog/marsh) between 1820 and 1990. Moore *et al.* (2003 cited in COSEWIC 2011) found wetland loss continued between 1989 and 1999 as a result of urban and agricultural encroachment. Agricultural land use changes, such as the conversion of field habitat to blueberry and cranberry production, has led to impacts through drain tile installation and riparian area encroachment/erosion. Sediment deposition into streams and wetlands by runoff from adjacent agricultural fields can impact Oregon spotted frog breeding habitat by changing the channel/wetland shape and depth (Lynch and Corbett 1990). Land conversion for agriculture is ongoing at Mountain Slough and to some extent at Maria Slough and Morris Valley (COSFRT 2012, p. 24), within Oregon spotted frog habitat.

Washington—Estimates for Washington indicate that over 33 percent of wetlands were drained, diked, and filled between pre-settlement times and the 1980s (Canning and Stevens 1990, p. 23); losses in the historical range of the Oregon spotted frog are even higher because of the high degree of development in the low elevations of the Puget Trough (McAllister and Leonard 1997, p. 22).

Major alterations to Conboy Lake wetland complex in Washington began when settlers started moving to Glenwood Valley in the late 1800s. Wet meadows were drained through a series of canals, ditches, and dikes largely developed between 1911 and 1914, and remain today. The five creeks that flow into this wetland complex and the Cold Springs ditch are entirely channelized within the wetland complex. Ditching, filling, and other habitat alterations have resulted in little or no retention of surface water in the late-season lakebeds (Conboy Lake and Camas Prairie), reducing the amount of aquatic habitat available for the Oregon spotted frog. The historical Conboy lakebed is believed to have retained water for 10 to 12 months in most years. Currently, it retains water only during wet years and is purposefully drained annually to control bullfrogs (Ludwig 2012, pers. comm.). The Camas Prairie portion of Glenwood Valley retains water year-round over a small area and only in wet years. Typically, aquatic habitat is reduced to about 1,000 ac (400 ha) during the late summer and early fall (Hayes *et al.* 2000), and once the seasonal lakebeds dry, the network of ditches and channels provide the only aquatic habitat for Oregon spotted frogs. In order to maintain sufficient flow through the system, a small area of Bird Creek must be excavated every 2 to 3 years to remove the high level of sand and gravel that is deposited annually from upstream. Most of the other ditches have been cleaned on a much less frequent basis (intervals of up to 20 years), although in the future, the Conboy Lake NWR plans to clean select reaches on a 5–10 year cycle (Ludwig 2012, pers. comm.).

Oregon—Historical losses of wetland in Oregon are estimated at 38 percent between pre-settlement times and the 1980s with 57 and 91 percent of these losses concentrated in the Willamette Valley and Klamath Basin, respectively (Dahl 1990). Wetland loss continues in the Willamette Valley (Daggett et al. 1998; Morlan et al. 2005). Between 1982 and 1994, a net loss of 6,877 ac (2783 ha) of wetlands (2.5 percent of the 1982 wetland area) occurred, primarily due to conversion to agriculture (Daggett et al. 1998 p. 23), and between 1994 and 2005, an estimated additional net loss of 3,932 ac (1591 ha) (1.25 percent of the 1994 wetland area) took place, primarily due to development (Morlan et. al. 2010. pp. 26–27). Oregon spotted frogs are believed to be extirpated from the Willamette Valley.

Human alteration of wetlands in the central Oregon Cascades has been a less severe threat since many of the sites inhabited by the Oregon spotted frog are located at high elevation and within lakes and wetlands located on Federal lands managed by the USFS. However, damming and diverting water for irrigation needs has resulted in the loss of wetlands within the Upper Deschutes sub-basin beginning in the early 1900s (see hydrology section below). Wetland loss is also an ongoing threat to Oregon spotted frogs within the Little Deschutes River sub-basin in south Deschutes County, where land development has increased since the 1960s.

A substantial amount of wetland habitat in the Klamath Basin has been drained and converted to other uses, primarily for grazing and row-crop production, although the extent of this loss is difficult to estimate due to a lack of accurate historical data (Larson and Brush 2010). The majority of wetland degradation and alteration took place in the southern part of the upper basin, where extensive drainage occurred at Tule and Lower Klamath Lakes in the early 20th Century (Larson and Brush 2010, p. 4). Wetlands at the north end of the basin, including Sycan Marsh, Klamath Marsh, Upper Klamath Lake, and in the Wood River Valley, have also suffered extensive hydrologic alteration. Ongoing losses are currently minimized due to strict regulations governing wetlands, and there are no known ongoing losses of wetlands in the

Klamath Basin. In addition, restoration efforts are under way in the Klamath Basin (see Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range), reversing wetland losses to some degree. However, because of subsidence, reconnection of former wetlands to Upper Klamath Lake resulted in these areas being too deep to support marsh vegetation and many of these areas do not support the variety of wildlife that they did formerly when they were marshes. Therefore, these wetlands are unlikely to provide all of their former functions.

Loss of Wetlands Conclusion—Historical loss of wetlands has been extensive throughout the range of the species, and is the primary reason for the absence of the species from as much as, or more than, 90 percent of its former range (also see Historical Distribution). Land conversions that result in loss of wetlands are continuing throughout the range. Wetlands continue to be lost or degraded in at least 10 of the 15 occupied sub-basins. Even though these losses are occurring at much lower rates than in the past because of Federal and State regulations that pertain to wetlands (see Factor D), the ongoing loss of wetlands continues to pose a threat to the Oregon spotted frog.

Hydrological Changes

Changing water levels at critical periods in the Oregon spotted frog's life cycle, whether natural or human-induced, has negatively affected the species. Lowered water levels have exposed individuals to predation by reducing cover and confining them to smaller areas where they are more vulnerable to predators (see also Factor C). Water level reduction during the breeding season, due to both natural and anthropogenic causes, has resulted in the loss of the entire reproductive effort for the year due to stranding and desiccation of the egg masses in British Columbia (Licht 1971, p. 122; COSFRT 2012, p. 18), Washington (Lewis *et al.* 2001, p. 8; Hayes *et al.* 2000, pp. 6–7), and Oregon (Pearl and Hayes 2004, p. 24). Excessive seasonal flooding at critical periods has also resulted in the loss of shallow wetlands needed for egg-laying and development.

Most of the currently occupied Oregon spotted frog sites are threatened by changes in hydrology. Twenty-one of twenty-eight (75 percent) sites surveyed in Washington and Oregon have had some human-related hydrological alterations, ranging from minor changes (for example, local ditching around springs) to substantial changes, including major modifications of historical flow patterns (Hayes 1997, p. 43; Hayes *et al.* 1997, p. 6). Oregon spotted frogs in four of the occupied sub-basins (Lower Fraser River, Middle Klickitat River, Little Deschutes River, and Upper Klamath) are experiencing high to very high impacts due to ongoing hydrological changes based on the unified threats classification system ranking, described above. The altered hydrology has affected both breeding and wintering habitat, as discussed below.

Water Diversions/Manipulations—Dams in the upper watersheds of the Puget Trough, Willamette Valley, and the Deschutes River have significantly reduced the amount of shallow overflow wetland habitat that was historically created by natural flooding (Cushman and Pearl 2007, pp. 16–17). The inundation of large marsh complexes, and habitat fragmentation by the construction of reservoirs in the Cascades, has also eliminated and degraded Oregon spotted frog habitat. We are not aware of proposals for construction of new dams or reservoirs that would pose a threat to the existing Oregon spotted frog populations in British Columbia, Washington, or Oregon. However, the operation of existing dams/diversions/water control structures in Washington and Oregon continues to affect populations of Oregon spotted frogs due to extreme water fluctuations between and within years. These operations inundate and desiccate Oregon spotted frog habitat, while creating and maintaining habitat suitable for nonnative predaceous species.

Water management in the Glenwood Valley, Washington (Middle Klickitat River sub-basin), appears to be playing a significant role in the decline of the Oregon spotted frog in this sub-basin. Water management in this area is complex due to the juxtaposition of landowners and water diversion structures. The need to retain water on the Conboy Lake NWR for resources, including the Oregon spotted frog, conflicts with needs of the intermingled and adjacent private landowners who want water drawn down in order to grow reed canarygrass for haying or to graze cattle. In addition, water management on the NWR is constrained by failing dikes, plugged ditches, undersized culverts, and lack of water control structures (USFWS 2012, p. 27). Dewatering by Conboy Lake NWR generally begins June 1, but begins as early as April on privately held lands, which also results in the dewatering of some refuge lands (USFWS 2012, p. 28). The Camas Prairie area of the valley is drained annually to facilitate production of hay and grazing opportunities (USFWS 2012, p. 28).

Dewatering breeding areas during the egg stage results in desiccation of Oregon spotted frog egg masses. Dewatering during the rearing stage results in tadpole mortality if water is not retained through metamorphosis. Physical barriers created by the dike system hinders young frogs (recently metamorphed) from moving into permanent waters, especially when water is drawn down too quickly or a surface water connection to permanent water is not retained. Disconnection from permanent water occurs in some places in the valley, which results in young frogs becoming stranded and dying. In the areas where a connection to permanent water is retained and frogs are able to move with the water, the frogs become concentrated in smaller areas with predators such as fish and bullfrogs or become easy targets for terrestrial predators (Engler 2003; 2006, pers. comm.). This issue is complex, because the nonnative bullfrog is fairly common on the refuge, and studies indicate they can prey heavily on native frog species, including Oregon spotted frog.

Water management can be used as a method to reduce bullfrog tadpole survival by drying up seasonal wetlands completely by early fall. However, widespread drawdowns for bullfrog tadpole control can conflict with the need to provide rearing, movement, and summertime water for Oregon spotted frogs (USFWS 2010b, pp. 36, 63, 67). Surveys since 1998 have documented extensive annual declines in Oregon spotted frog egg mass numbers due to early water drawdowns and perennially low water; therefore, inadequate water or poorly timed water management activities continue to be a threat to Oregon spotted frog that has a significant negative impact on recruitment (the addition of young individuals to the adult population) and survival in the Middle Klickitat River sub-basin.

In the Upper Deschutes River sub-basin in Oregon, regulated water releases from Crane Prairie and Wickiup Reservoirs result in extreme seasonal fluctuations in stream flows that have affected the amount of overwintering and breeding habitat available for Oregon spotted frogs. Prior to the construction of Wickiup Dam in 1947, the Deschutes River below the current dam site exhibited stable flows averaging approximately 730 cubic feet per second (cfs) (20.7 cubic meters per second (cms)) and 660 cfs (18.7 cms) during summer and winter, respectively (Hardin-Davis 1991). Water storage in

the reservoirs during winter, water releases in the spring, and water diversions for irrigation result in extremely low winter flows (October through March) in the Deschutes River below Wickiup Dam of approximately 20–30 cfs, 0.6–0.8 cms, and high summer flows (July and August) of approximately 1,400 cfs (39.6 cms). Because water releases from Wickiup Reservoir typically occur in early to mid-April, potential breeding habitats downstream of Wickiup Dam on the mainstem Deschutes River may not have sufficient water during the breeding season to facilitate frog movement and breeding.

Currently, Oregon spotted frog breeding is known to occur in only three areas downstream of Wickiup Reservoir: Sunriver, Slough Camp, and Old Mill Pond (including adjacent Les Schwab Amphitheater marsh on the Deschutes River). Oregon spotted frog habitat at Sunriver Resort has been managed and maintained by Sunriver Nature Center by using weirs to stabilize the water levels from the beginning of the breeding season through metamorphosis, which has resulted in a large and fairly stable population of Oregon spotted frogs, despite the low river flows during the breeding season. Breeding and dispersal of metamorphosing frogs at the Slough Camp site is likely affected by the seasonal timing of storage and release of water from the reservoir each year. Adults have been observed at the inlet to Slough Camp (east side) prior to the flow releases from the reservoir in early April, indicating that frogs may be staging to access breeding habitat that becomes accessible when flows are released for the irrigation season (Higgins 2012, pers. comm.). At the onset of the storage season in October, the east side of Slough Camp drains rapidly of water, which could result in stranding of frogs that have bred and reared in this location. In August 2012, Oregon spotted frogs were discovered in a water retention pond at The Old Mill District shops in downtown Bend, Oregon. The shallow pond holds water year round and is approximately 20 ft (6 m) from the Deschutes River channel. The hydrological relationship between the pond and flow manipulation within the river has not been determined. However, there is an outflow from the pond, and the detection of numerous juvenile Oregon spotted frogs in a large marsh on the Deschutes River across from the pond at The Old Mill (Bowerman 2012, pers. comm.) indicates there is a connection to the river. The impacts of regulated river flows to Oregon spotted frogs within the large marsh area remain to be evaluated.

Oregon spotted frog habitat in the Little Deschutes River sub-basin in Oregon may also be affected by regulated water management downstream of Crescent Lake Dam in Crescent Creek and the Little Deschutes River below the confluence with Crescent Creek. Regulated water releases from Crescent Lake typically occur in June, just after the breeding season. Egg mass stranding has been observed on three separate occasions along the Little Deschutes River, downstream of the confluence with Crescent Creek, prior to the release of irrigation water (Demmer 2012, pers. comm.). Overwintering habitats may be limited when flows from Crescent Lake typically cease in October at the onset of the storage season. Groundwater may be ameliorating the impacts from the regulated water management in Crescent Creek in locations where groundwater discharges to the stream (Gannett et al. 2001), but a full analysis has not yet been conducted.

In the Klamath Basin, the Upper Klamath sub-basin populations are particularly vulnerable to water diversion and manipulation. Water from Hyatt (30 cfs; 0.8 cms) and Howard Prairie Reservoirs (50 cfs; 1.4 cms) are diverted to Keene Creek Reservoir (Ferrari 2000, p. 1; Bear Creek Watershed Council 2001, p. 139) upstream of Parsnip Lakes (Jackson County), known occupied habitat for the Oregon spotted frog. Approximately 190 cfs (5.4 cms) of water is diverted from Keene Creek Reservoir and used for municipal consumptive and hydroelectric energy purposes (BOR 2009 Web site; BOR 2011 Web site). In addition, water from Buck Lake (Klamath County) can be manipulated, depending on water needs, in such a way that water is moved quickly across the landscape. Water flow in the Upper Klamath Lake and Williamson River sub-basins is highly manipulated (modified) to improve forage production for cattle grazing (see Livestock Grazing Klamath Basin discussion) (NRCS 2010, p. 60). The water is diverted (removed) after egg masses have been laid, but prior to their hatching, thus resulting in both stranding and desiccation of upstream egg masses while, at the same time, inundating downstream egg masses.

Development—Other hydrological changes result from the development of homes and roads adjacent to wetlands with Oregon spotted frogs. Development introduces new impervious surfaces which increase the amplitude and frequencies of peak highs and lows in water levels, a hydrologic characteristic that has been implicated in reduced amphibian species diversity in wetlands in King County, Washington (Richter and Azous 1995, p. 308). (See Development section below for further discussion).

Drought—Changes in water levels due to drought, and exacerbated by human modification, has caused seasonal loss of habitat and degradation of essential shoreline vegetation that has resulted in reduced recruitment regionally (Licht 1971, p. 122; Licht 1974, p. 623). In 1997, Hayes identified 14 of 24 (58 percent) Oregon spotted frog breeding locations across the extant range as having a moderate to high risk from drought (1997, pp. 43–45). Drought risk was based on the potential for a drop in water level that could reduce or eliminate the species' habitat. Sites with the greatest risk included those sites with low precipitation levels and sites dependent upon surface flow rather than flow from springs. Sites with the greatest risk from drought are in the Klamath and Deschutes River basins of Oregon (Hayes 1997, p. 44; Hayes *et al.* 1997, p. 6). The impact of a drought on an Oregon spotted frog population depends on the amount of complex marsh habitat at a site, the availability of alternative breeding and rearing areas, and the abundance of aquatic predators (Pearl 1999, p. 15).

Both Hayes (1997, p. 43) and Pearl (1999, pp. 17–18) hypothesized that low water conditions will increase the overlap between Oregon spotted frogs and nonnative predators, such as brook trout and bullfrogs, by concentrating tadpoles and froglets in the only available habitat. Such increased overlap is expected to increase predation losses of Oregon spotted frogs (Pearl *et al.* 2004, pp. 17–18). Several seasons of low water are expected to cause local population extirpations of Oregon spotted frogs, particularly where a small isolated population occupies a limited marsh habitat that has a high abundance of aquatic predators (Pearl 1999, p. 15). Low water in breeding habitat will also expose eggs to increased ultraviolet radiation and higher mortality associated with pathogens (Kiesecker *et al.* 2001a, p. 682) (see Factor C Disease section). Since 1960, the Klamath Basin has had 8 of the 10 lowest inflows for Upper Klamath Lake between 1991 and 2009 (USFWS 2011a, p. 25). This has resulted in poor water quality and reduced Oregon spotted frog reproduction due to desiccation of egg masses (BLM and USFS multiple data sources). In addition, 5 of the 10 sites in the Klamath Basin are vulnerable to water

management practices that are timed such that the seasonal life-history needs of the Oregon spotted frog are not met.

Although the Chemult Ranger District, Fremont-Winema National Forest, in Klamath County, Oregon, documented high numbers of egg masses at Jack Creek in 1999 and 2000 (335 and 320 respectively) (Forbes and Peterson 1999, p. 6), drought conditions impacted the Oregon spotted frog populations in subsequent years. The drought occurred during the time period in which the Oregon spotted frog population dramatically declined at Jack Creek (Gervais 2011, p. 15). In 2001, those conditions restricted Oregon spotted frog breeding to three small, disjunct areas representing less than 25 percent of their typical habitat. Although there were sufficient water depths in the breeding pools in 2002, only 17 percent of historical egg mass numbers were detected, and 50 percent of the eggs did not hatch compared to the 68 to 74 percent hatch rates documented by Licht (1974, p 618). The impacts of the drought were further complicated when Oregon spotted frog habitat was impacted by algal blooms, poor water quality, loss of protective habitat, and alteration of the bank condition (USDA 2009a, pp. 31, 33–34). By 2011, only 1 percent of historical egg mass numbers were documented at this site.

Loss of Beaver—American beaver (*Castor canadensis*) create a complex mosaic of aquatic habitat types that provides the seasonal habitat needs of the Oregon spotted frog. Water impoundments created and engineered by beavers result in a water storage reservoir that raises the water table, reduces downstream erosion, lessens flood events (unless the dam is breached), holds water year round and maintains stream flow during dry periods. Specifically, silt-filled abandoned ponds become shallow wetlands and beaver meadows, which have characteristics ideal for egg-laying. Beaver-maintained ponds retain deeper waters important for summer foraging and growth of metamorphosed frogs, and these ponds also provide overwintering habitat. When hypoxic conditions occur in the wetlands and ponds, the frogs can move to the more oxygenated waters of the associated creek, where they use microhabitat features created by beavers such as large woody debris and bank tunnels (Hallock and Pearson 2001, pp. 9–12; Shovlain 2005, p. 10).

Comparisons of beaver-occupied and not occupied watersheds in Montana in relation to Columbia spotted frog populations found: (a) Beaver watersheds had four times as many lentic and breeding sites than non-beaver watersheds; (b) frog breeding sites were dispersed within beaver drainages, while non-beaver watersheds often had only one frog breeding site; (c) frog breeding sites were evenly distributed across the elevational gradient in beaver watersheds, while they were centered above the watershed midpoint in non-beaver watersheds; (d) frog breeding sites were more dispersed within drainages with evidence of beaver presence than would be expected given the configuration of the underlying lentic habitat and have persisted despite being separated by distances larger than the frog's dispersal ability; (e) beaver watersheds with an average distance of less than 5 km between breeding sites showed higher levels of connectivity than did non-beaver watersheds with an average distance of more than 5 km between breeding sites; and (f) short beaver watersheds had lower levels of genetic divergence between breeding sites than those in long non-beaver watersheds separated by the same distance, even when distances were within the commonly observed dispersal ability of the frogs (Amish 2006, entire). Columbia and Oregon spotted frogs were separated into two separate species (*Rana pretiosa* (Oregon spotted frog) and *Rana luteiventris* (Columbia spotted frog)), based on genetic analysis (Green *et al.* 1996, 1997). They are closely related species and likely evolved in a similar way, with beavers playing a vital role in how frogs are distributed within a watershed.

By 1900, beaver had been nearly extirpated in the continental United States (Baker and Hill 2003, p. 288). Beavers have made a remarkable comeback in many areas through natural recolonization and relocation efforts (ODFW 2012, p. 1); however, their role as ecological engineers is still severely curtailed region-wide, particularly within human-populated areas, because they are often considered a pest species because they can flood roads and property and destroy trees that are valued by landowners (Baker and Hill 2003, p. 301). In at least one site, a significant Oregon spotted frog decline was attributed to the removal of a series of beaver dams that resulted in water loss within some of the breeding areas leading to high embryo mortality attributed to stranding (Hayes *et al.* 2000, p. 2). In Trout Lake Creek in Washington, the loss of a beaver dam to a natural flood event resulted in a significant decline (117 egg masses in 2001 to 0 in 2012) in Oregon spotted frog reproduction (Hallock 2012, p. 33). Lack of beavers within a watershed has been determined by USFS and BLM to be a threat to maintenance of Oregon spotted frog habitat, and these agencies have identified the Williamson, Upper Klamath Lake, and Upper Klamath sub-basins for reintroduction of beaver.

The States of Washington and Oregon allow lethal removal of beavers and their dams. Under Washington State law, the beaver is classified as a furbearer (WAC 232–12–007). The owner, the owner's immediate family, an employee, or a tenant of property may shoot or trap a beaver on that property if a threat to crops exists (RCW 77.36.030). In such cases, no special trapping permit is necessary for the use of live traps. However, a special trapping permit is required for the use of all traps other than live traps (RCW 77.15.192, 77.15.194; WAC 232–12–142). It is unlawful to release a beaver anywhere within Washington, other than on the property where it was legally trapped, without a permit to do so (RCW 77.15.250; WAC 232–12–271). To remove or modify a beaver dam, one must have a Hydraulic Project Approval (HPA)—a permit issued by WDFW for work that will use, obstruct, change, or divert the bed or flow of State waters (RCW 77.55). Beavers are present to a varying degree within all Oregon spotted frog occupied sub-basins in Washington and are maintaining breeding habitats in some areas within the S.F. Nooksack River, Black River, White Salmon River, and Middle Klickitat River sub-basins. Active removal of beavers or their dams is occurring in at least the S.F. Nooksack River, Black River, and Middle Klickitat River sub-basins and may be occurring in the other occupied sub-basins in Washington.

Beavers on public lands in Oregon are classified as Protected Furbearers by Oregon Revised Statute (ORS) 496.004 and Oregon Administrative Rule (OAR) 635–050–0050. A trapping license and open season are required to trap beavers on public lands. Beavers on private lands are defined as a Predatory Animal (ORS 610.002) and private landowners or their agents may lethally remove beavers without a permit from ODFW. Currently, the presence of beavers results in active maintenance of Oregon spotted frog habitat in the Little Deschutes River, Upper Deschutes River, Middle Fork Willamette River, Williamson River, and Upper Klamath Lake sub-basins. Active removal of beavers and their dams can occur in the Oregon spotted frog habitat in all of these occupied sub-basins in Oregon. Under State laws in both Washington and Oregon, it is lawful to kill beavers

or to remove or modify beaver dams, and those lawful actions reduce or degrade wetland habitats used by all life stages of Oregon spotted frogs.

Hydrologic Changes Conclusion—A variety of factors affecting the hydrology of wetlands and riverine systems cause the loss or detrimental modification of habitats necessary for the survival and reproduction of Oregon spotted frogs. Within 11 of the 15 sub-basins occupied by the species, water diversions/manipulations, development, drought, and loss of beavers are resulting in hydrological changes that pose a threat to all life stages of the Oregon spotted frog, including loss of or disconnections between breeding, rearing, and overwintering habitat, as well as desiccation or flooding of egg masses. The impact to Oregon spotted frogs of these hydrological changes has been determined—based on our unified threats classification system (Rangewide Threats Synthesis)—to be moderate to very high in five of the occupied sub-basins: Middle Klickitat River, Upper Deschutes River, Little Deschutes River, Williamson River, and Upper Klamath.

Changes in Vegetation

Oregon spotted frog egg-laying sites are generally characterized by low vegetation canopy coverage and a substrate at least partially covered with the previous year's emergent herbaceous vegetation (Leonard 1997, p. 3; Hayes *et al.* 2000, p. 8; Pearl and Bury 2000, p. 6; Pearl 1999, p. 15). Egg masses are generally found in shallow water over vegetation and are rarely found above open soil or rocky substrates (Hayes *et al.* 2000, p. 8, Pearl and Bury 2000, p. 8). Watson *et al.* (2003, p. 296) found that habitat selection by Oregon spotted frogs during the breeding season was strongly correlated with sedge habitat in Washington. In Oregon, Pearl *et al.* (2009a, p.141) found the dominant vegetation at egg-laying areas to be sedge-rush habitat.

Loss of natural wetland and riverine disturbance processes as a result of human activities has and continues to result in degradation of Oregon spotted frog habitat. Historically, a number of natural forces created early successional wetlands favorable to Oregon spotted frogs. These forces included rivers meandering over their floodplains, removing trees and shrubs and baring patches of mineral soil; beavers felling trees and woody shrubs, trampling vegetation, and dragging limbs and logs through shallows; and summer fires burning areas that would be shallow water wetlands during the Oregon spotted frog breeding season the following spring. Today, all of these forces are greatly reduced, impaired, or have been permanently altered as a result of human activities. In addition, the current wetland management paradigm is generally a no-management approach that often results in continued invasion by invasive plants or succession to a tree- and shrub-dominated community, both of which are unsuitable for Oregon spotted frog breeding.

Invasive plants such as reed canarygrass may completely change the structure of wetland environments, and can create dense areas of vegetation unsuitable as Oregon spotted frog habitat (McAllister and Leonard 1997, p. 23). Reed canarygrass competitively excludes other native plant species and limits the biological and habitat diversity of host wetland and riparian habitats (Antieau 1998, p. 2). Reed canarygrass also removes large quantities of water through evapotranspiration, potentially affecting shallow groundwater hydrologic characteristics (Antieau 1998, p. 2). Reed canarygrass dominates large areas of Oregon spotted frog habitat at lower elevations (Hayes 1997, p. 44; Hayes *et al.* 1997, p. 6) and is broadening its range to high-elevation (i.e., above 4,500 feet (>1,371 m)) Oregon spotted frog habitat in the Little Deschutes and Upper Deschutes River sub-basins in Oregon (USDA 2008, USDA 2009b; USDA 2009c; and USDA 2011b). Watson *et al.* (2003, p. 296) compared the types and amount of habitat used by Oregon spotted frogs and found the frogs used areas of reed canarygrass less frequently than other habitats based on availability. Given this apparent avoidance of reed canarygrass, vegetation shifts to reed canarygrass dominance in wetlands occupied by Oregon spotted frogs are likely affecting Oregon spotted frog breeding behavior.

Studies conducted in Washington (White 2002, pp. 45–46; Pearl and Hayes 2004, pp. 22–23) demonstrated that the quality of breeding habitats for Oregon spotted frogs is improved by reducing the height of the previous years' emergent vegetation (i.e., reed canarygrass in these cases). However, improvement in breeding habitat for Oregon spotted frogs was retained only if vegetation management was maintained. For example, in all occupied sub-basins in Washington and in the Klamath subbasin in Oregon, an indirect effect of the removal of cattle grazing has been the reduction in the amount and quality of breeding and rearing habitat due to encroachment by vegetation, such as reed canarygrass and shrubs. The effects of grazing vary among sites and likely depend on a suite of factors including, but not limited to, timing, intensity, duration, and how these factors interact with seasonal habitat use patterns of Oregon spotted frog.

Reed canarygrass is present at three of the British Columbia breeding areas and is the dominant vegetation at most of the breeding areas in Washington. In Oregon, reed canarygrass is colonizing portions of Big Marsh and Little Lava Lake, both of which are headwaters to the Little Deschutes and Upper Deschutes River sub-basins, respectively. Reed canarygrass also is present in Oregon spotted frog habitat at Lava Lake, Davis Lake, Wickiup Reservoir, multiple sites along the Little Deschutes River (i.e., 7 out of 13 surveyed sites), Slough Camp, Wood River Wetland, the Klamath Marsh NWR, Fourmile Creek, and the Williamson River. The impact to Oregon spotted frogs due to habitat loss from reed canarygrass invasion has been determined through our threat analyses to be high to very high in seven sub-basins: Lower Fraser River in British Columbia and all sub-basins in Washington. The threat to Oregon spotted frog habitat from reed canarygrass is considered to be moderate in two sub-basins in Oregon: Little Deschutes River and Upper Deschutes River.

Vegetation succession was indicated as a negative factor at almost all remaining Oregon spotted frog sites analyzed by Hayes, who noted that some sites were particularly vulnerable to habitat loss where marsh-to-meadow changes were occurring (Hayes 1997, p. 45). Pearl (1999, p. 15) suggested that the aquatic habitat types necessary for Oregon spotted frog reproductive sites in lake basins exist only within a narrow successional window. As marsh size decreases due to plant succession, shallow warm water sites required by Oregon spotted frogs are lost to increased shading by woody vegetation (Pearl 1999, pp. 15–16). Investigations by Hayes (1997, p. 45) and Pearl (1999, p. 16) ranked 22 of 28 Oregon spotted frog sites as having a moderate or high threat from vegetation succession. Encroachment around and into marshes by lodgepole pine and other woody vegetation is occurring at Conboy Lake in Washington (Ludwig 2011, p. 3) and at multiple breeding locations in Oregon, and is likely facilitated by ditching and draining of wetter sites to improve grazing (Cushman and Pearl 2007, p. 17). The highest impact to Oregon spotted frogs resulting from lodgepole pine encroachment is taking place in the Upper Deschutes River sub-basin and in the upper elevations of the

Little Deschutes River sub-basin in Oregon, where these breeding habitats (i.e., those within the riparian lodgepole plant association group), evolved with fire as a natural disturbance process. The loss of natural fire cycles in forests of the eastern Cascade Mountains due to suppression on National Forest land since 1910 (Agee 1993, p. 58) has allowed succession to continue without disturbance. Plot data suggest that historical fire return intervals for riparian lodgepole pine vegetation types in central Oregon ranged 12–36 years and averaged 24 years (Simpson 2007, p. 9–6), indicating that this disturbance process was more frequent historically in this forest type.

The United States Department of Agriculture's National Resources Conservation Service (NRCS) and Farm Service Agency have several voluntary programs, including the Wetland Reserve Program (WRP), CREP, and Wildlife Habitat Incentive Program (WHIP). The WRP and CREP are voluntary programs designed to help landowners address concerns regarding the use of natural resources and promote landowner conservation. Under the WRP, landowners enter into a voluntary agreement with NRCS to protect, restore, and enhance wetlands on their property. Various enrollment options are available to landowners, including Permanent Easements, 30-Year Easements, Restoration Cost-Share Agreements, or 30-Year Contracts (USDA NRCS 2013). Under the CREP, the Farm Service Agency provides payments to landowners who sign a contract committing to keeping lands out of agricultural production for a period of 10 to 15 years. NRCS produces technical guidelines generally aimed at improving soil conditions, agricultural productivity, and water quality, which generally do not result in specific conservation measures for the protection of the Oregon spotted frog. Rather, restoration actions funded or carried out by NRCS include planting trees and shrubs in riparian areas.

These activities have had unforeseen consequences to Oregon spotted frog habitat by degrading breeding habitat because, as discussed above, tree- and shrub-dominated communities are unsuitable for Oregon spotted frog breeding. This is known to have occurred within the last 10 years at breeding locations in Black, Samish, and South Fork Nooksack Rivers in Washington (USFWS Nisqually NWR; Bohannon *et al.* 2012) and may be happening elsewhere. Currently, one known occupied private land parcel has entered into a WRP agreement in the Klamath Basin in Oregon. The WRP agreement for this particular parcel allows no grazing in perpetuity, which in the long term, may result in reduced quality of Oregon spotted frog habitat. We are aware of at least one CREP contract in the South Fork Nooksack River sub-basin that resulted in conifer tree plantings in Oregon spotted frog breeding locations which resulted in the wetted areas becoming drier and mostly shaded. The Service has had preliminary discussions with NRCS and is working with the agency to address this management issue.

Changes in vegetation conclusion—Expansion of reed canarygrass into Oregon spotted frog habitat poses a threat to the continued existence of these habitats given the invasive nature of the plant and its ability to outcompete native vegetation in wetland habitats. Shallow water wetlands inhabited by Oregon spotted frog are threatened through rapid encroachment of the grass and increased evapotranspiration of water. Loss of habitat at breeding sites due to reed canarygrass is high to very high in seven occupied sub-basins in British Columbia and Washington. Reed canarygrass poses a threat in the Little Deschutes and Upper Deschutes River sub-basins in Oregon, and is present at varying abundances in many locations occupied by Oregon spotted frog.

Vegetation succession, particularly where natural disturbance processes are lacking, is a negative factor at almost all Oregon spotted frog sites. Structural changes to vegetation that occur through succession, whether from native or nonnative grasses, shrubs, or trees, results in decreased wetland size and amount of open water area available to frogs. Furthermore, shrub and tree encroachment increases shading of shallow warm water sites required by Oregon spotted frogs for breeding and rearing. Encroachment by lodgepole pine and other woody vegetation is occurring at multiple breeding locations in Washington and Oregon and is considered a threat in at least seven sub-basins: Lower Deschutes River, Upper Deschutes River, McKenzie River, Middle Fork Willamette River, Williamson River, Upper Klamath Lake, and Upper Klamath. Unintended loss of habitat is taking place as a result of riparian restoration activities that remove grazing and plant shrubs and trees within sub-basins occupied by Oregon spotted frogs in Washington and Oregon. Therefore, based on the best scientific information available, changes in vegetation pose a threat to Oregon spotted frogs throughout the range of the species.

Development

Removal or alteration of natural riparian vegetation around watercourses or wetlands for urban or agricultural development compromises aquatic ecosystem function via reductions in biodiversity and water quality and quantity. Residential and commercial encroachment often destroy or disturb natural vegetation, alter water flows and seasonal flooding, or result in the loss of entire wetland complexes. Agricultural practices, including grazing, can result in the rapid removal of water across the landscape for stimulation of early grass production. All of these factors have been shown to reduce the survival and reproductive capacity of Oregon spotted frogs, as discussed previously.

Although the historical impact of development has significantly reduced the abundance and geographic distributions of Oregon spotted frogs (for example, the Fraser River Valley in British Columbia, Puget Trough in Washington, and Willamette Valley in Oregon), development is currently an ongoing threat at only a few specific locations. In British Columbia, housing and residential developments continue to remove or alter habitat at Mountain and Maria Sloughs, and there are new commercial developments at Mountain Slough (COSFRT 2012, p. 26).

In Washington, some counties prohibit draining of wetlands and some counties require setbacks from wetlands (see Factor D for further information), but this is not consistent, nor consistently implemented. In addition, a large proportion of the breeding areas for Oregon spotted frogs in Washington are not technically classified as a wetland under the county definitions because these areas are seasonally flooded pastures. The private lands surrounding breeding areas for Oregon spotted frog in most of the occupied sub-basins are presently zoned as rural or rural residential, which is designed only to allow low-density housing and maintain the rural and agricultural uses. However, the human populations of all counties in the Puget Sound area are growing and Thurston, Whatcom, and Skagit Counties have the 6th, 9th, and 10th largest populations, respectively, among Washington State's 39 counties (U.S. Census Bureau data downloaded August 29, 2012). Between 1990 and 2011, the populations in these three counties have doubled. This population increase is expected to continue, resulting in new residential and commercial developments that will alter vegetation, water flow, and the seasonal

flooding that creates and maintains habitat for Oregon spotted frogs.

Development of land along the Little Deschutes River and its tributaries in Oregon is a continued threat to Oregon spotted frogs. The rural character of the Little Deschutes River watershed, the attractive location of private property on the Little Deschutes River, and relatively inexpensive land prices have contributed to a rapidly growing population (UDWC 2002, p. 12). In the 1960s and 1970s before Oregon statewide planning regulated growth and development, 15,000 one- and two-acre lots were created in subdivisions in the vicinity of the Little Deschutes River. Since 1989, Deschutes County has been the fastest growing county in Oregon on a percentage basis. The unincorporated areas of Deschutes County, including the lower portions of the Little Deschutes River, are projected to increase in population size by as much as 56 percent above the 2000 level over the next 20 years (UDWC 2002, p. 12). This rapid population growth rate is expected to continue into the future (UDWC 2002, p. 12), thereby increasing risks to wetland habitats that support Oregon spotted frogs in the vicinity of the Little Deschutes River.

Development in the Klamath Basin is also increasing in Oregon. The population of Klamath County increased 10.5 percent from 1990 to 2000 (U.S. Census Bureau 2008) and annual housing starts have increased by 13 percent since 2000 (Portland State University 2011 Web site). Much of the growth is outside of city boundaries, and several large residential developments are within or adjacent to wetlands that historically had the ability to support Oregon spotted frog habitat. In addition, agricultural practices, including grazing, occur extensively within all three occupied sub-basins. This has the potential to result in the desiccation or inundation of Oregon spotted frog habitat (See Livestock Grazing Klamath Basin discussion). While it is unknown to what extent urban development has impacted Oregon spotted frog habitat, agricultural development is ongoing and continues to impact Oregon spotted frog habitat.

Development conclusion—Development of residential, commercial, and agricultural properties is continuing in at least 10 of the sub-basins occupied by the Oregon spotted frog. In some areas, the human population is expected to continue to grow. Development activities directly and indirectly have removed or altered habitat necessary to support all life stages of Oregon spotted frogs. Therefore, we consider development—both at the present time and in the future—to be a threat to Oregon spotted frogs.

Livestock Grazing

In several riparian zones and wetland complexes in British Columbia, Washington, and Oregon, livestock grazing occurs within Oregon spotted frog habitat, although its effects vary with the site conditions, livestock numbers, timing, and intensity. Livestock (primarily horses and cows) can cause direct mortality by trampling adult frogs (Ross et al. 1999, p. 163) and egg masses when livestock are allowed in shallow water habitat when frogs are present. Livestock graze and trample emergent and riparian vegetation, compact soil in riparian and upland areas, and reduce bank stability, which results in increased sedimentation and water pollution via urine and feces (Hayes 1997, p. 44; Hayes 1998b, p. 8; 61 FR 25813). The resulting increases in temperature and sediment production, alterations to stream morphology, effects on prey organisms, and changes in water quality negatively affect Oregon spotted frog habitat. Livestock also act as vectors for the introduction of weed seeds that alter riparian vegetation characteristics (Belsky and Gelbard 2000, p. 9), and they are a source of introduced parasites and pathogens (See Factor C).

Fourteen of twenty-eight (50 percent) sites surveyed in British Columbia, Washington, and Oregon were directly or indirectly influenced (negatively and positively) by livestock grazing (Hayes 1997, p. 44; Hayes *et al.* 1997, p. 6; Pearl 1999, p. 16). Severe habitat modification has been caused by cattle at several Oregon spotted frog localities in Oregon. Large numbers of cattle at a site negatively affect habitat for Oregon spotted frogs, particularly at springs used by frogs as overwintering sites (Hayes 1997, p. 44). The most recent work monitoring the effects of livestock grazing on Oregon spotted frogs involved grazed and ungrazed treatments at Jack Creek on the Fremont Winema National Forests in Oregon (Shovlain 2005 entire). Shovlain's (2005, p. 11) work suggested that livestock grazing displaced Oregon spotted frogs to ungrazed exclosures as grazing pressure outside the enclosures increased. Livestock trampling and consumption likely affects the microhabitat preferred by Oregon spotted frogs by reducing emergent and riparian vegetation, which could explain Shovlain's findings. However, the frogs in Shovlain's study did not show a preference for exclosures or controls under lower grazing pressure. Therefore, a moderate degree of grazing does not appear to affect frog behavior, suggesting an intermediate level of disturbance may be conducive to Oregon spotted frog habitat use (Hayes *et al.* 1997, p. 6, Hayes 1998b, pp. 8–9, McAllister and Leonard 1997, p. 25, Watson *et al.* 2003, p. 299).

Moderate livestock grazing can, in some instances (for example, Dempsey Creek in Washington), benefit Oregon spotted frogs by maintaining openings in the vegetation in highly altered wetland communities (Hayes 1997, p. 44; Hayes *et al.* 1997, p. 6; McAllister and Leonard 1997, p. 25). Watson *et al.* (2003, p. 299) found that habitat at 78 percent of the Oregon spotted frog locations surveyed at the Dempsey Creek site had signs of grazing, which created penetrable, open habitat that was otherwise too dense for frog use.

British Columbia—Only one known breeding location (Morris Valley) in the Lower Fraser River sub-basin is grazed (by horses) (COSEWIC 2011, p. 33), and grazing is identified as a specific concern for Oregon spotted frogs at this location because of the potential for trampling of egg masses, bank erosion, and input of feces (COSEWIC 2011, p. 33).

Washington—In the recent past, it appears that grazing was beneficial to Oregon spotted frogs at all remaining breeding areas in Washington; however, grazing no longer occurs in the breeding areas in four of the six sub-basins due to land manager preferences and/or water quality regulations that prohibit grazing within certain distances from rivers and wetlands. Active management is required to maintain the Oregon spotted frog habitat at these locations due to heavy reed canarygrass infestations, but funding is limited and grazing had been the least expensive/easiest management option. In the Black River, grazing ceased along Dempsey Creek when the privately owned dairy operation was sold. Cows were reintroduced to the Port Blakely Tree Farm and Musgrove (Nisqually NWR) parcels in 2008 (USFWS 2011b) as part of a reed canarygrass control experiment; however, Oregon spotted frog egg mass numbers have not increased as was expected (WDFW 2011 database; USFWS 2011b). Grazing occurs at the only known breeding location in the Lower Chilliwack River sub-basin. This site has likely persisted as a result of dairy cows maintaining the site in a state of early seral habitat (Bohannon *et al.* 2012, p. 17).

Oregon—Overgrazing of the Camas Prairie in Oregon was considered a threat to Oregon spotted frog prior to 2008, after which grazing was restricted (Corkran 2012). Overgrazing by cattle

reduced the vegetative hiding cover for frogs, making them more susceptible to predation. Livestock-induced fertilization resulted in an increased density of the aquatic vegetation, which inhibited the ability of frogs to drop below the water's surface when threatened by predation while basking (C. Corkran pers. comm. 2012). However, grazing may be considered as a management tool to maintain early seral habitat for Oregon spotted frogs in the future if necessary (C. Corkran pers. comm. 2012).

None of the central Oregon Cascade breeding locations within the Deschutes and Willamette National Forests are within grazing allotments. Known breeding locations occur within allotments on the U.S. Bureau of Land Management (BLM) Prineville District lands along Crescent Creek, Long Prairie Creek, and the Little Deschutes River. Currently, only the Crescent Creek area is affected by active grazing on BLM lands, although there is potential for grazing to occur on BLM lands along the Little Deschutes River. Grazing has been cited as an impact to riparian and wetland habitats on private lands along the Little Deschutes River (The Wetlands Conservancy, 2004, p. 22). Wetland habitats in the Little Deschutes River sub-basin have been negatively impacted by grazing through removal of riparian vegetation, which destabilizes banks and increases channel incision, resulting in less water retention in riparian wetlands and conifer encroachment (UDWC 2002, pp. 21 and 33).

Six sites in the Klamath Basin are associated with grazing: Jack Creek, Buck Lake, Parsnip Lakes, and on private lands on the Wood River, Williamson River, and adjacent to Klamath Marsh NWR. These sites are potentially vulnerable to both the direct impacts of grazing sedimentation, trampling, as well as the indirect effect of egg mass desiccation resulting from water management techniques that drain water early in frog breeding season to stimulate grass production. Livestock grazing is cited as a specific concern for Oregon spotted frogs at Jack Creek, Fremont-Winema National Forest, Chemult Ranger District, in Oregon (USDA 2004, pp. 56–57). Since 1999, the population has reduced from 670 breeding adults (335 egg masses) to 34 breeding adults (17 egg masses) in 2011. The two primary breeding sites in Jack Creek occur on private land that is heavily grazed in combination with USFS allotments. This intensity of grazing is expected to have degraded the quality of the Oregon spotted frog breeding habitat and reduced reproduction (Shovlain 2005).

Since 2008, current USFS management at the Jack Creek site has not permitted cattle grazing on lands occupied by Oregon spotted frogs (Markus 2012, pers. comm.). However, 419 cow/calf pairs specifically permitted for grazing have access to 61 acres (25 ha) of potential, but not currently supporting, Oregon spotted frog habitat on this 68,349 ac (27,660 ha) combination of USFS and private pasture. Within this pasture, however, there are several riparian areas accessible to grazing cattle as well as one offsite watering source installed on adjacent private land. The permittee for this pasture has grazed their private lands where Oregon spotted frogs are known to occur, although the number of cattle and timing are not known. However, the permittee has also partnered with the USFWS to complete multiple conservation actions to benefit Oregon spotted frogs and their habitats on their private lands including—but not limited to—the installation of 2 to 3 offsite watering sources, protection of frog ponds, thinning of encroaching lodgepole pine trees, and installation of a wattle for water retention (Markus 2012, pers. comm.).

Conflicts between cattle and frogs increase when stream flows are limited, especially when cattle are using the creek for drinking (Gervais 2011, p. 15). Between 2001 and 2005, and again in 2007, drought conditions affected habitat for Oregon spotted frogs in the Chemult Ranger District, Fremont-Winema National Forest in Oregon. However, until 2008 when grazing was restricted, 419 cow/calf pairs had access to the habitat areas associated with Oregon spotted frogs (Gervais 2011, p. 11). Cattle were observed congregating in Oregon spotted frog habitat because nearly every other water source in the allotment went dry (Simpson 2002, pers. comm.). Trampling of frogs by cattle and alterations in water quality, bank structure, and loss of protective vegetation compounded the impacts of the reduction of available habitat due to drought conditions on Oregon spotted frog reproduction (USDA 2009a, pp. 31, 33–34).

Livestock Grazing Conclusion—Where livestock grazing coincides with Oregon spotted frog habitat, impacts to the species include trampling of frogs and changes in habitat quality due to increased sedimentation, increased water temperatures, water management techniques, and reduced water quality. The effects of livestock grazing vary with site conditions, livestock numbers, and timing and intensity of grazing. In Washington, all of the known occupied areas have been grazed in the recent past, but where grazing has been removed, heavy infestations by invasive reed canarygrass have reduced or eliminated habitat for Oregon spotted frogs unless other management techniques were applied. In controlled circumstances, moderate grazing can be beneficial if it is the only practical method for controlling invasive, nonnative vegetation and sustaining early seral stage vegetation needed for egg laying. Grazing is ongoing in 10 of the occupied sub-basins and is considered to be a threat to Oregon spotted frogs at these locations.

Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range

British Columbia—Past and ongoing habitat conservation activities in British Columbia include habitat creation at MD Aldergrove, Maria Slough, and Mountain Slough; habitat rehabilitation at Maria and Mountain Sloughs; and invasive grass species management at MD Aldergrove, Maria Slough, and Mountain Slough. There is also a landowner stewardship contact program that encourages stewardship activities at Mountain Slough. However, the Service concluded that these measures are not sufficient to ameliorate threats to Oregon spotted frogs in the Lower Fraser River.

Washington—In Washington, some reed canarygrass management is taking place at most of the breeding locations in the Black River, on the Trout Lake NAP, and at Conboy Lake NWR. These management techniques include mowing, burning, cattle grazing, and shade cloth. However, these management techniques are not widespread at any one location or adequate to prevent loss of egg-laying habitat.

Conboy Lake NWR in Washington has completed several wetland restoration projects to restore natural hydrological processes to portions of the refuge. This enabled the NWR to maintain independent water management of several wetlands, regardless of the water-related impacts of local landowners. However, under current management, water is not retained throughout the year on most of the NWR and adjacent private wetlands, and many of these areas that had Oregon spotted frogs in the late 1990s no longer have Oregon spotted frogs.

Cattle grazing ceased at Trout Lake NAP in Washington after a monitoring study showed no apparent positive effect on the Oregon spotted frog population trends (Wilderman and

Hallock 2004, p. 10), indicating that either grazing was not an effective tool for reed canarygrass management at this location, or that perhaps reed canarygrass was not as threatening to breeding frogs at this location as previously thought. This may be because winter snow pack compresses the reed canarygrass, leaving none of the previous season's vertical stems available to Oregon spotted frogs during the breeding season. The observed negative consequences of grazing, while perhaps acceptable if there was clear benefit to the Oregon spotted frog populations, were not compatible with other site management goals and posed a limitation to future restoration on the site (Wilderman and Hallock 2004, p. 14). Instead, problematic areas of reed canarygrass are being managed using ground barriers and occasional fall mowing (Hallock 2012, p. 31).

Under the Washington State Forest Practices Act, WDNR must approve certain activities related to growing, harvesting, or processing timber on all local government, State, and privately owned forest lands. WDNR's mission is to protect public resources while maintaining a viable timber industry. The primary goal of the forest practices rules is to achieve protection of water quality, fish and wildlife habitat, and capital improvements while ensuring that harvested areas are reforested. Presently, the Washington State Forest Practices Rules do not specifically protect Oregon spotted frogs; however, they do include protection measures for surface waters and wetlands. The intent of the protection measures, such as buffers on wetlands, is to limit excess coarse and fine sediment delivery and to maintain hydrologic regimes. Tree harvest is limited in wetland buffers, which may in turn facilitate vegetation encroachment. Landowners have the option to develop a management plan for the species if it resides on their property, or if landowners choose not to develop a management plan for the species with WDFW, their forest practices application will be conditioned to protect this public resource. While the Washington State Forest Practices Rules provide some protections for the Oregon spotted frog and its habitat, the direct and indirect consequences of limiting tree harvest within the wetland buffer is vegetation encroachment that is resulting in loss of wetlands (i.e., reduced size) and shading.

USDA NRCS is overseeing the restoration at two Samish River locations and is incorporating Oregon spotted frog breeding habitat requirements into its planned restoration (that originally included de-leveling and tree and shrub plantings in the breeding areas) (Bohannan et al. 2012, p. 17).

Oregon—In Oregon, several conservation actions have been and continue to be implemented for Oregon spotted frogs in the Deschutes River Basin. Sunriver Nature Center has been monitoring the frog population at the Sunriver Resort since 2000. Although this area is affected by the fluctuating flows out of Wickiup Reservoir, Sunriver Nature Center has constructed weirs that allow the water level to be steady or rising from the time of egg-laying through hatching, thus assisting the persistence of this large and stable population. The Deschutes National Forest has closed perimeter ditches at Big Marsh, where past drainage and grazing had led to degradation of the marsh. The Mt. Hood National Forest has fenced sections of Camas Prairie and restricted excessive grazing of the meadow. Implementation of these conservation actions is assumed to have resulted in increased breeding success of Oregon spotted frogs at these locations. In addition, BLM's Prineville District Office recently completed encroachment removal projects and repairs to headcuts in systems that have had historically or currently have Oregon spotted frogs. Headcutting is a process of active erosion in a channel caused by an abrupt change in slope. Turbulence in the water undercuts substrate material resulting in collapse of the upper level. This under-cut-collapse process advances up the stream channel. The results of BLM's efforts are unknown at this time; however, they were completed specifically to ameliorate threats to Oregon spotted frog habitat.

Since 1994, in the Oregon portion of the Klamath Basin, the Service's Partners for Fish and Wildlife Program, in collaboration with private landowners, has restored approximately 8,832 ac (3,568 ha) of wetlands adjacent to Upper Klamath Lake. Several habitat restoration projects are under way in known occupied areas including Crane Creek, Sevenmile Creek, Jack Creek, and the Upper Williamson River. Restoration projects include re-channelizing creeks and rivers to provide breeding and rearing habitat, construction of breeding ponds, construction of riparian fences to exclude cattle, and the installation of alternate water sources. To date, Oregon spotted frogs have been detected in only one restored, previously unoccupied wetland area, although survey efforts in restored habitats have not yet been completed.

The BLM's Klamath Falls Field Office has initiated several habitat restoration projects within their Wood River Wetland property, including installation of water control structures, construction of breeding ponds, and canal restructuring for additional breeding areas. To date, 3,000 ac (1,214 ha) of wetland habitats associated with the Wood River Canal have been restored. However, for reasons unknown, Oregon spotted frogs have not been detected in the restored wetlands, but rather, have only been associated with the canal system (BLM multiple data sources). BLM actively manages the water in the canal during the breeding season to prevent stranding and inundating Oregon spotted frog egg masses.

The Fremont-Winema National Forest, Chemult Ranger District, in the Oregon portion of the Klamath Basin has initiated a project to restore habitat along Jack Creek, which as of 2008, includes the removal of cattle from a portion of the lands owned by the USFS (Gervais 2011 p. 9). In addition, encroaching lodgepole pine (Gervais 2011 pp. 11–12) has been thinned on both USFS and private lands as a result of this project. In cooperation with adjacent private landowners, the USFS recently released seven beavers into the Jack Creek watershed (Simpson 2012, pers. comm.), which is intended to increase the open water and breeding habitat for Oregon spotted frogs. One of the private landowners has also installed log fences to protect three Oregon spotted frog pools, and two off-stream water sources to exclude cattle from riparian areas, and wattle installment (a fabrication of poles interwoven with slender branches) for water retention (Markus 2012, pers. comm.). In addition, in 2009, the USFS installed fences at Buck Meadow to control grazing on the USFS lands (Lerum 2012, p. 18). The long-term benefits of the USFS efforts are unknown at this time; however, these actions were completed to specifically ameliorate threats to the Oregon spotted frog's habitat.

The USFS has completed and continues to work on Oregon spotted frog Site Management Plans that identify threats and management actions to reduce threats at each of the following sites: Sevenmile, Jack Creek, Buck Lake, Dilman Meadow, Hosmer Lake, Lava and Little Lava Lake, Big Marsh, Odell/Davis Lake, Little Cultus Lake, Mink Lake Basin and Gold Lake. Implementation of management actions is voluntary and dependent upon funding and will likely occur at the District level.

The Comprehensive Conservation Plan (CCP) for Klamath Marsh NWR includes conservation actions for maintaining or improving local habitat conditions for the benefit of Oregon spotted frogs on NWR property. These include: restoring or maintaining hydrologic regimes, protecting and restoring ephemeral and permanent wetlands, restoring or maintaining open water and early seral vegetation communities, reevaluating or discontinuing fish stocking practices, development of comprehensive grazing strategies or adaptive management plans where livestock occur in habitat, and working locally and cooperatively to maintain and restore habitat conditions and to monitor the outcomes of management actions for Oregon spotted frog (USFWS 2010, p. 72). The CCPs detail program planning levels that are sometimes substantially above current budget allocations and are primarily used for strategic planning and priority setting, thus inclusion of a project in a CCP does not guarantee that the project will be implemented. However, implementation of the above conservation actions within the CCP could benefit a minimum of 338 breeding individuals. These actions are expected to improve the status of the Oregon spotted frog on the Klamath Marsh NWR if adequate budget allocations are provided and the projects are implemented. Existing wetland restoration activities at Klamath Marsh NWR have been limited to invasive weed management (Mauser 2012, pers. comm.).

Summary of habitat or range destruction, modification, or curtailment—Past human actions have destroyed, modified, and curtailed the range and habitat available for the Oregon spotted frog, which is now absent from an estimated 76 to 90 percent of its former range. The loss of wetlands is continuing at certain locations in at least 10 of the 15 remaining occupied sub-basins, particularly on private lands. The historical and ongoing alteration of hydrological processes resulting from the operation of existing water diversions/manipulation structures, existing and new roads, residential development, agricultural areas, and the removal of beavers continues to impact Oregon spotted frogs and their habitat. The changes in hydrology result in the loss of breeding through inundation or desiccation of egg masses, loss or degradation of habitat necessary for all Oregon spotted frog life stages, and the creation of habitat conditions that support nonnative predaceous species. Reed canarygrass invasions, plant succession, and restoration plantings continue to modify and reduce the amount and quality of habitat necessary for all Oregon spotted frog life stages. The timing and intensity of livestock grazing, or lack thereof, continues to change the quality of Oregon spotted frog habitat in British Columbia, Washington, and Oregon due to increased sedimentation, increased water temperatures, and reduced water quality. Oregon spotted frogs in all currently occupied sub-basins are subject to one or more of these threats to their habitat. Eleven of the 15 occupied sub-basins are currently experiencing a high to very high level of impact, primarily due to hydrological changes/manipulations, vegetation encroachment, and reed canarygrass invasions. These impacts are ongoing, are expected to continue into the future, and affect habitat that supports all life stages of the Oregon spotted frog.

The benefits of the conservation actions to Oregon spotted frogs are site-specific, but are not sufficient to ameliorate the habitat threats at a sub-basin scale. Wetland restoration efforts have been implemented, but rarely are these specifically designed for Oregon spotted frogs, and may inadvertently reduce habitat quality for this early-seral species. Further, post-restoration monitoring has not been accomplished to evaluate whether these efforts are benefiting Oregon spotted frogs. Therefore, based on the best information available, the threats to Oregon spotted frogs from habitat destruction, modification, or curtailment are occurring throughout the entire range of the species, and are expected to continue into the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes has been documented for a wide range of amphibians. During the egg-laying period, Oregon spotted frogs occur in relatively easy-to-access locations that could make them easy to collect. However, we are not aware of collection of Oregon spotted frogs for commercial, recreational, or educational purposes.

Oregon spotted frog populations may be negatively impacted by scientific studies. In all Washington breeding locations and some of the breeding locations in British Columbia and Oregon, surveys are conducted annually during the egg-laying period. While these surveys are conducted in a manner to avoid trampling of frogs and egg masses (protocol example Pearl *et al.* 2010), such impacts may still occur. The extent to which any population is impacted by these surveys is unknown, but expected to be low. Eggs were collected each year beginning in 2002 from at least two of the extant locations in British Columbia for a headstart rearing program, which released metamorphic Oregon spotted frogs back into those sites (COSFRT 2012, pp. 30–31). This effort has ceased because it was deemed unsuccessful at bolstering the extant populations; however, captive husbandry for potential release into new locations continues.

The Washington Department of Fish and Wildlife has collected 7,870 eggs (through 2011) from various breeding locations on the Black River and Conboy NWRs for their captive-rearing program (Tirhi and Schmidt 2011, pp. 51–55). During this period, the population has continued to decline at Conboy Lake, but the source of the decline is unclear and cannot specifically be attributed to the egg collection. USGS and Colorado State University have been collecting eggs in the Deschutes and Klamath Basins for genetic studies since 2007, resulting in the collection of at least 3,000 eggs (Robertson and Funk 2012 pp. 8–11; C. Pearl 2012, pers. comm.). However, we have no evidence to indicate that Oregon spotted frogs are being overutilized for commercial, recreational, scientific, or educational purposes such that this activity poses a threat to the species.

Factor C. Disease or Predation

Disease

Amphibians are affected by a variety of diseases, and some diseases are known to negatively affect declining amphibian species. Diseases that are currently known to occur in Oregon spotted frogs and have the potential to affect populations are briefly discussed below. The specific effects of disease and parasitism on Oregon spotted frogs are not well documented.

Red-Leg Syndrome—Red-leg syndrome has been identified in several declining amphibian species but is not known to be a significant problem for the Oregon spotted frog (Blaustein 1999, pers. comm.). Red-leg syndrome refers to a common condition in which there is a reddening of the lower body, usually the legs and sometimes the abdomen, due to a dilation of capillaries under the skin. This disease is presumed to be widespread, having been reported for > 100 years in many different species of frogs and salamanders in captivity and in the wild (Densmore and Green 2007, p. 236).

Chytrid Fungus—Chytrid fungus (*Batrachochytrium dendrobatidis* (Bd)) has been implicated in the decline and extinction of numerous amphibian species in multiple locations around the world (Speare and Berger 2004). In the United States, 7 families including 18 amphibian species have been diagnosed as infected with Bd (Speare and Berger 2004). Bd infection has been documented in at least seven ranid frogs from the Pacific Northwest, including Oregon spotted frogs (Adams *et al.* 2010, p. 295; Pearl *et al.* 2009b, p. 212; Hayes *et al.* 2009, p. 149). Chytridiomycosis is a cutaneous infection that "results in a severe diffuse dermatitis characterized by epidermal hyperplasia, hyperkeratosis, and variable degrees of cutaneous ulceration and hyperemia" (Bradley *et al.* 2002, p. 206). Clinical signs can include lethargy, abnormal posture, loss of the righting reflex (ability to turn over), and death (Daszak *et al.* 1999, p. 737). The fungal organism, Bd, is likely transmitted by release of zoospores into the water that eventually contact a susceptible animal, penetrating the skin, and establishing an infection (Pessier *et al.* 1999, p. 198; Bradley *et al.* 2002, p. 206). Dermal infections by Bd are thought to cause mortality by interfering with skin functions, including maintaining fluid and electrolyte homeostasis (balance), respiration, and the skin's role as a barrier to toxic and infectious agents (Pessier *et al.* 1999, p. 198; Bradley *et al.* 2002, p. 206). Unlike most other vertebrates, amphibians drink water and absorb important salts (electrolytes) through the skin rather than the mouth. In diseased individuals, electrolyte transport across the epidermis was inhibited by >50 percent, resulting in cardiac arrest and death (Voyles et al. 2009, pp. 582, 585).

In 2007 and 2008, USGS sampled Oregon spotted frogs at sites across Washington and Oregon; Bd was confirmed at all locations sampled (Pearl *et al.* 2009b, p. 212). Even though Pearl *et al.* (2009b, p. 216) detected Bd at 100 percent of the sites sampled, they did not observe morbidity or mortality that could be attributed to chytridiomycosis. In addition to confirmation at USGS-sampled sites, Bd has been confirmed in Oregon spotted frogs near Sunriver in central Oregon (Bowerman 2005, pers. comm.) and Conboy Lake NWR (Hayes *et al.* 2009, p. 149) in Washington. Pearl *et al.* (2007, p. 147) detected Bd more frequently in highly aquatic species, such as Oregon spotted frogs, than in species with more terrestrial adult stages and shorter larval periods, suggesting that Oregon spotted frogs may be experiencing elevated exposure and infection due to their highly aquatic life-history. In addition, modeling done by Pearl *et al.* (2009b, p. 213) indicates that juvenile Oregon spotted frogs that test positive for Bd infection are more likely to have a poorer body condition after overwintering than individuals that test negative for Bd infection.

Alone, Bd may not be a concern for some healthy amphibian populations; however, most of the Oregon spotted frog populations in Oregon and Washington are already exposed to several stressors, such as predation, competition from nonnative species, and water quality degradation, and the effects of Bd are likely to be exacerbated and potentially compounded by these interactions (for example, see Parris and Baud 2004, pp. 346–347; Parris and Cornelius 2004, pp. 3388–3390; Parris and Beaudoin 2004, p. 628). In addition, Bd has been found in nonnative species that co-occur with Oregon spotted frogs in central Oregon (Pearl *et al.* 2007, p. 147); in particular, bullfrogs may serve as a Bd host while experiencing limited negative effects from the pathogen.

Laboratory studies have shown that infecting Oregon spotted frogs with Bd inhibits growth without necessarily showing any direct clinical signs (Padgett-Flohr and Hayes 2011). Recently metamorphosed frogs exposed to one of two strains of Bd tested positive for the pathogen within 11 days after exposure; however, no frogs died or displayed clinical signs of disease and most (83 percent) tested negative for the pathogen within 90 days of exposure. However, infected frogs gained significantly less weight than control animals, suggesting the infection carried an energetic cost. The detection of Bd at all Oregon spotted frog sites sampled, combined with the lack of observed mortality (in the wild and laboratory testing), indicates Oregon spotted frogs may be able to persist with Bd infections (Pearl *et al.* 2009b, p. 216) but growth and presumed long-term survival (e.g., avoidance of predators) are inhibited. Consequently, in light of the numerous amphibian extinctions attributed to Bd, and in conjunction with the other stressors that impact Oregon spotted frogs, we conclude that Bd poses a risk to individual Oregon spotted frog populations, particularly those most susceptible to climate changes (see Factor E), but additional studies are necessary to determine whether Bd is a threat rangewide to the Oregon spotted frog.

Other pathogens, such as iridoviruses (specifically *Ranavirus*), have been documented to cause mortality in North American amphibians (Dasak *et al.* 1999, pp. 741–743). While not yet documented in wild Oregon spotted frog populations, iridovirus outbreaks have been identified as a major source of mortality in British Columbia captive-rearing programs for Oregon spotted frogs (COSEWIC 2011, p. 35).

Saprolegnia—The oomycete water mold *Saprolegnia* has been suggested as one of the causes of amphibian declines in the Pacific Northwest (Kiesecker and Blaustein 1997, p. 218). Genetic analysis confirmed oomycetes of multiple genera on amphibian eggs in the Pacific Northwest, including Oregon spotted frogs (Petrisko *et al.* 2008, pp. 174–178). McAllister and Leonard (1997, p. 25) reported destruction of developing Oregon spotted frog egg masses by this fungus, but not to the extent observed in other amphibian eggs. The threat of *Saprolegnia* to Oregon spotted frog populations is unclear, but this fungus has been shown to destroy Oregon spotted frog egg masses and could pose a threat to individual Oregon spotted frog breeding areas in the future.

Ultraviolet-B Radiation—Impacts resulting from exposure to ultraviolet-B radiation (UV–B) appear to vary greatly between amphibian species. Ambient levels of UV–B radiation in the atmosphere have risen significantly over the past few decades due to decreases in stratospheric ozone, climate warming, and lake acidification. Because amphibian eggs lack shells and adults and tadpoles have thin, delicate skin, they are extremely vulnerable to increased levels of UV–B radiation. However, the harmful effects of UV–B radiation on amphibians depend upon a number of variables (Blaustein *et al.* 2003, pp. 123–128). Studies summarized in Blaustein *et al.* (2003) indicate UV–B exposure can result in mortality, as well as a variety of sublethal effects, including behavior alteration, slow growth and development, and developmental and physiological malformations. The type and severity of effect varies by life stage exposed and dosage of UV–B. Experimental tests conducted by Blaustein *et al.* (1999, p. 1102) found the hatching success of Oregon spotted frogs was unaffected by UV–B, indicating their eggs may be UV-resistant. However, a meta-analysis of available published literature conducted by Bancroft *et al.* (2008) found that exposure to UV–B resulted in a 1.9-fold reduction in amphibian survival and that larvae (tadpoles) were more susceptible than embryos. In addition, Bancroft *et al.* (2008) determined that UV–B interacted synergistically with other environmental stressors, such as

contaminants, resulting in greater than additive effects on survival. For example, Kiesecker and Blaustein (1997, pp. 217–218) found increased mortality associated with the fungus identified as *Saprolegnia ferax* in amphibian embryos exposed to UV–B; especially susceptible were amphibians that lay eggs in communal egg masses, like Oregon spotted frogs. At present, the extent of population-level impacts from UV–B exposure is unknown.

Malformations—The North American Reporting Center for Amphibian Malformations (NBII 2005) documents amphibian malformations throughout the United States. Malformations of several *Rana* species, including the Cascades frog (*Rana cascadae*), red-legged frog (*Rana aurora*), foothill yellow-legged frog (*Rana boylii*), and bullfrog, have been reported within the current and historical range of the Oregon spotted frog in Washington, Oregon, and California. We are aware of one report from Thurston County, Washington, of an Oregon spotted frog with an extra forelimb (NBII 2005) and reports of malformations from Deschutes (Johnson *et al.* 2002a, p. 157; Bowerman and Johnson 2003, pp. 142–144), Douglas, and Lane (NBII 2005) Counties in Oregon. Growing evidence suggests that the high frequencies of severe limb malformations may be caused by a parasitic infection (*Ribeiroia ondatrae*) in amphibian larvae (Johnson *et al.* 2002a, p. 162). Recent investigations also indicate small fish and certain libellulid and corduliid dragonfly larvae attack developing tadpoles and can cause high incidences of missing-limb deformities, including complete amputation (Ballengee and Sessions 2009; Bowerman *et al.* 2010). At present, the extent of population-level impacts from malformations is unknown.

Parasitic infection—Aquatic snails (*Planorbella* spp.) are the exclusive intermediate host for the trematode *Ribeiroia ondatrae* (Johnson and Chase 2004, p. 523) and are found in a diversity of habitats, including ephemeral ponds, montane lakes, stock ponds, oxbows, drainage canals, and reservoirs (Johnson *et al.* 2002a, p. 164). Trematodes are parasitic flatworms that have a thick outer cuticle and one or more suckers or hooks for attaching to host tissue. Johnson *et al.* (2002, p. 165) postulate that the dramatic and widespread alterations of aquatic ecosystems, particularly the construction of small impoundments or farm ponds, may have created environments that facilitate high densities of *Planorbella* snails and the resulting infections from *R. ondatrae*. Many of the sites with high frequencies of malformations were impacted heavily by cattle and supported dense *Planorbella* snail populations. Malformations in multiple amphibian species were found in Washington ponds that had a history of grazing that extended back at least 50 years (Johnson *et al.* 2002a, p. 165).

Johnson *et al.* (2002, p. 166) found the frequency of malformations in larval amphibians was significantly higher than in transformed amphibians from the same system, suggesting that malformed larvae experience greater mortality prior to and during metamorphosis. However, sensitivity to and severity (mortality versus no malformation) of infection varies by amphibian species (Johnson and Hartson 2009, p. 195) and tadpole stage exposed (Schotthoefer *et al.* 2003, p. 1148).

High levels of *R. ondatrae* infection and the resulting malformations may increase mortality in wild amphibian populations and may represent a threat to amphibian populations already in decline. Johnson *et al.* (2002a, p. 157) and Bowerman and Johnson (2003, pp. 142–144) have found deformities in Oregon spotted frogs caused by this parasite at the Sunriver Nature Center Pond, which had a high population of large planorbid snails. Three additional ponds within 6 mi (10 km) were also investigated, each of which supported planorbid snails, but at lower infestation levels. None of these ponds yielded malformed Oregon spotted frogs (Bowerman *et al.* 2003, pp. 142–143). Most of the malformations found in anuran frogs were around the hind limbs, where they are more likely to be debilitating (hinder mobility) and expose the frog to increased risk of predation (reduced escape/evade ability). (Johnson *et al.* 2002a, p. 162). In a study on wood frogs (*Rana sylvatica*), Michel and Burke (2011) reported malformed tadpoles were twice as vulnerable to predators because they could not escape or evade.

Human manipulation of upland areas adjacent to amphibian breeding areas and direct manipulation of the breeding areas can affect the prevalence of *Planorbella* snails and the infection rate of *R. ondatrae*. Complex habitats reduce transmission rates of larval trematodes because these habitats provide more refugia for tadpoles. Alternatively, simplified habitats, such as agricultural landscapes, have been shown to reduce parasite prevalence by limiting access of vertebrate hosts, particularly in birds (King *et al.* 2007, p. 2074). However, when simplified habitats are subject to water runoff associated with agricultural, cattle, or urban sources and eutrophication, the abundance of snails can increase, thereby increasing the prevalence of trematodes and parasitic risks to frogs (Johnson and Chase 2004, pp. 522–523; Johnson *et al.* 2007 p. 15782). While the effects of these parasite-induced malformations are clear at the individual scale, population-level effects remain largely uninvestigated. However, Biek *et al.* (2002, p. 731) found that the viabilities of pond-breeding amphibians were most vulnerable to reductions in juvenile or adult survival relative to other portions of the life cycles. Therefore, it is reasonable to infer that where *Planorbella* snails coincide with Oregon spotted frogs, malformations will occur resulting in mortality of juvenile frogs and a population decline at that location. At present, it is not known where these co-occurrences take place, nor how extensive infections levels may be, but 11 of the occupied sub-basins have agricultural, cattle, or urban sources that produce runoff that can increase the snail populations, and negative effects have been demonstrated at the Sunriver Nature Center Pond population.

Predation

Predation is a process of major importance in influencing the distribution, abundance, and diversity of species in ecological communities. Generally, predation leads to changes in both the population size of the predator and that of the prey. In unfavorable environments, prey species are stressed or living at low population densities such that predation is likely to have negative effects on all prey species, thus lowering species richness. In addition, when a nonnative predator is introduced to the ecosystem, negative effects on the prey population may be higher than those from co-evolved native predators. The effects of predation may be magnified when populations are small, and the disproportionate effect of predation on declining populations has been shown to drive rare species even further toward extinction (Woodworth 1999, pp. 74–75).

Introduced fish species within the historical range of the Oregon spotted frog may have contributed to losses of populations. Oregon spotted frogs, which are palatable to fish, did not evolve with these introduced species and may not have the mechanisms to avoid the predatory fish that prey on the tadpoles. The warm water microhabitat requirement of the Oregon spotted frog, unique among native ranids of the Pacific Northwest, exposes it to a

number of introduced fish species (Hayes 1994, p. 25), such as smallmouth bass (*Micropterus dolomieu*), largemouth bass (*Micropterus salmoides*), pumpkinseed (*Lepomis gibbosus*), yellow perch (*Perca flavescens*), bluegill (*Lepomis macrochirus*), brown bullhead (*Ameriurus nebulosus*), black crappie (*Pomoxis nigromaculatus*), warmouth (*Lepomis gulosus*), brook trout (*Salvelinus fontinalis*), rainbow trout (*Oncorhynchus mykiss*), and fathead minnow (*Pimephales promelas*) (Hayes and Jennings 1986, pp. 494–496; Hayes 1997, pp. 42–43; Hayes *et al.* 1997; McAllister and Leonard 1997, p. 14; Engler 1999, pers. comm.).

Surveys from 1993 to 1997 in British Columbia, Washington, and Oregon documented at least one introduced predator in 20 of 24 sites (Hayes *et al.* 1997, p. 5). Brook trout was the most frequently recorded introduced predator, which was recorded at 18 of 24 sites. Although differences in temperature requirements between the two species may limit their interactions, brook trout apparently occur with the Oregon spotted frog at coldwater springs, where the latter species probably overwinters and where cooler water is favorable to brook trout (Hayes *et al.* 1997, p. 5). During drought years, dropping water levels result in overlap in habitat use between these two species. As wetland refuges are reduced, Oregon spotted frogs become concentrated and the larval stages are exposed to brook trout predation (Hayes *et al.* 1997, p. 5; Hayes 1998a, p. 15), resulting in lower Oregon spotted frog recruitment (Pearl 1999, p. 18). In addition to effects in breeding habitat, Pearl *et al.* (2009a, p. 143) found substantial evidence for a negative effect on overwintering Oregon spotted frogs from nonnative fish with access to spring and channel habitats. In these latter situations, predation is believed to be more pronounced in spatially constrained overwintering habitats where frogs and fish may both seek flowing water with dissolved oxygen. Their findings suggest that these negative effects are mediated by habitat complexity and the seasonal use of microhabitats, and Oregon spotted frogs can benefit from fish-free overwintering sites, even if fish are present in other local habitats.

Demographic data indicate that sites with significant numbers of brook trout and/or fathead minnow have a skewed ratio of older spotted frogs to juvenile frogs, suggesting poor reproductive success or juvenile recruitment (Hayes 1997, pp. 42–43, 1998a). While experimental data are sparse, field surveys involving other western amphibians (e.g., Adams 1999, p. 1168; Monello and Wright 1999, pp. 299–300; Bull and Marx 2002, pp. 245–247; Vredenberg 2004; Knapp 2005, pp. 275–276; Pearl *et al.* 2005b, pp. 82–83) and other closely related frog species strongly suggest that introduced fish represent a threat to Oregon spotted frogs that has significant impacts (Pearl 1999, pp. 17–18). A study of the impacts of introduced trout on Columbia spotted frog populations in Idaho revealed that, although fish and adult frogs coexisted at many of the stocked lakes, most stocked lakes contained significantly lower densities of all amphibian life stages (Pilliod and Peterson 2001, p. 326). On the other hand, preliminary results from the Willamette Valley in Oregon suggest that nonnative, warm water fishes actually benefit introduced populations of bullfrogs because of fish predation on macroinvertebrates that would otherwise prey on bullfrog larvae (Adams and Pearl 2003).

The presence of these nonnative species has been shown to increase the time for metamorphosis and decrease the mass of native red-legged frogs (Kiesecker and Blaustein 1997). A recent study documented nonnative fish negatively influencing the survival and growth of Pacific treefrogs while bullfrog larvae reduced the growth but had no effect on survival (Preston *et al.* 2012, p. 1257). In addition, the predation effects of nonnative fish and bullfrogs on Pacific tree frogs were additive, but those species had little impact on each other (Preston *et al.* 2012, p. 1259). Many of the sub-basins occupied by Oregon spotted frogs also have introduced warm- and/or cold-water fish, and 5 of the 15 sub-basins are subject to high to very high impacts due to predation of larvae and reduced winter survival.

The Oregon Department of Fish and Wildlife (ODFW) stocks fish in most of the Cascades Lakes and two reservoirs in the Upper Deschutes River sub-basin occupied by Oregon spotted frogs (Hodgson 2012, pers. comm.). In addition to stocking, there is natural production of various fish species, both native and introduced, in the lakes and reservoirs in the Upper Deschutes River sub-basin and in lakes in the McKenzie River and Middle Fork Willamette sub-basins where spotted frogs occur (Hodgson 2012, pers. comm.; Ziller 2013, pers. comm.; USFS 2011). ODFW no longer stocks fish in any of the moving waters associated with Oregon spotted frog locations within the Klamath Basin (Tinniswood 2012, pers. comm.).

Bullfrogs introduced from eastern North America into the historical range of the Oregon spotted frog may have contributed to losses of populations. The introduction of bullfrogs may have played a role in the disappearance of Oregon spotted frogs from the Willamette Valley in Oregon and the Puget Sound area in Washington (Nussbaum *et al.* 1983, p. 187). Bullfrogs share similar habitat and temperature requirements with the Oregon spotted frog, and the overlap in time and space between the two species is believed to be extensive (Hayes 1994, p. 25; Hayes *et al.* 1997, p. 5). Bullfrogs can reach high densities due to the production of large numbers of eggs per breeding female and unpalatability (and high survivorship) of tadpoles to predatory fish (Kruse and Francis 1977, pp. 250–251). Bullfrog tadpoles outcompete or displace tadpoles of native frog species from their habitat or optimal conditions (Kupferberg 1997, pp. 1741–1746, Kiesecker and Blaustein 1998, pp. 783–784, Kiesecker *et al.* 2001b, pp. 1966–1967).

Bullfrog adults achieve larger size than native western ranids and even juvenile bullfrogs can consume native frogs (Hayes and Jennings 1986, p. 492; Pearl *et al.* 2004, p. 16). The digestive tracts of a sample of 25 adult bullfrogs from Conboy Lake in Washington contained nine Oregon spotted frogs, including seven adults (McAllister and Leonard 1997, p. 13). A later examination of the stomachs of two large bullfrogs revealed two adult or subadult Oregon spotted frogs in one stomach and four in the second (Hayes 1999, pers. comm.). Bullfrogs were recorded consuming hatchling Oregon spotted frogs at British Columbia's Maintenance Detachment Aldergrove site (Haycock and Woods 2001, unpubl. data cited in COSFRT 2012, p. 19). In addition, USGS has observed Oregon spotted frogs within dissected bullfrogs at multiple sites throughout the Deschutes and Klamath Basins (Pearl 2012, pers comm.).

Oregon spotted frogs are more susceptible to predation by bullfrogs than are northern red-legged frogs (Pearl *et al.* 2004, p. 16). Oregon spotted frogs and northern red-legged frogs historically coexisted in areas of the Pacific Northwest that are now invaded by bullfrogs. However, the Oregon spotted frog has declined more severely than the northern red-legged frog. Pearl *et al.* (2004, p. 16) demonstrated in laboratory experiments that the more aquatic Oregon spotted frog juveniles are consumed by bullfrogs at a higher rate than are northern red-legged frog juveniles. Oregon spotted frogs and

northern red-legged frogs also differ in their ability to escape bullfrogs, with Oregon spotted frogs having shorter mean and maximum jump distances than northern red-legged frogs of equal size. Bullfrogs, therefore, pose a greater threat to Oregon spotted frogs than to red-legged frogs. Oregon spotted frog's microhabitat use and escape abilities may be limiting their distributions in historical lowland habitats where bullfrogs are present, whereas red-legged frog populations are more stable (Pearl *et al.* 2004, pp. 17–18).

The ability of bullfrogs and Oregon spotted frogs to coexist may be related to differences in seasonal and permanent wetland use. However, a substantial bullfrog population has likely coexisted with Oregon spotted frogs for nearly 50 years in Conboy Lake in Washington (Rombough *et al.* 2006, p. 210). This long-term overlap has been hypothesized to be the evolutionary driver for larger body size of Oregon spotted frogs at Conboy Lake (Rombough *et al.* 2006, p. 210). On the other hand, Oregon spotted frogs at Trout Lake NAP in Washington also exhibit body sizes that exceed the general mean and range for the species elsewhere but do not co-occur with bullfrogs. Winterkill could be a factor in controlling the bullfrog population at Conboy Lake and, hence, facilitating co-existence with Oregon spotted frogs (Engler and Hayes 1998, p. 2); however, the Oregon spotted frog population at Conboy Lake has declined over the last decade, some of which is likely due to bullfrog predation. Bullfrogs have been actively controlled in the Sunriver area in Oregon for more than 40 years, and despite efforts to eradicate them, they have been expanding in distribution (Bowerman 2012, pers. comm.). Bullfrogs have been documented up to 4,300 feet (1,311 m) elevation in the Little Deschutes River sub-basin in habitat occupied by Oregon spotted frog. Bullfrogs have been found in 10 of the 15 sub-basins occupied by Oregon spotted frogs, but are relatively rare at most of the locations where they co-occur. However, based on our threats analysis, the impacts due to predation and/or competition with bullfrogs within the Lower Fraser River, Middle Klickitat sub-basins in Washington, and the Upper Klamath Lake sub-basin in Oregon are considered to be high to very high because of the more extensive overlap between these two species in these areas.

Green frogs (*Lithobates clamitans*) are native to the eastern United States but have been introduced to the western United States and Canada. This introduced species occurs at a few lakes in Whatcom County, Washington (McAllister 1995; WDFW WSDM database), but Oregon spotted frogs are not known to occur in these lakes. Green frogs do co-occur with Oregon spotted frogs at Maria and Mountain Sloughs in British Columbia (COSEWIC 2011, p. 36). Adult green frogs may eat young Oregon spotted frogs, but adult Oregon spotted frogs may reach a size that is too large to be prey for the species. Whether green frogs are significant competitors of Oregon spotted frogs is currently unknown. High population densities of green frogs possibly attract and maintain higher than normal population densities of native predators, which in turn increases predation pressure on Oregon spotted frogs (Canadian Recovery Team 2012, p. 19).

Conservation Efforts To Reduce Disease or Predation

Despite considerable knowledge about the habitat and management requirements for Oregon spotted frog, refuge management at the Conboy Lakes National Wildlife Refuge remains complex as habitat needs and the abatement of other stressors often conflict with the conventional intensive wetland management that occurs on the refuge (USFWS, 2010b, p. 64). The historical Conboy Lake basin in Washington likely retained water for 10 to 12 months in most years. Currently, it retains water only during wet years and is drained annually by the Conboy Lake NWR to control bullfrogs for the benefit of Oregon spotted frogs. However, the draining of the lakebed forces all surviving bullfrogs, fish, and Oregon spotted frogs into the canal system for the fall and winter, increasing potential predation for Oregon spotted frogs.

In the Upper and Little Deschutes River sub-basins in Oregon, there has been little effort to control invasive predators. Bullfrog eradication has been attempted at two sites within the Upper and Little Deschutes sub-basins: Sunriver and Crosswater, respectively. However, it appears that bullfrogs may be increasing in the Sunriver area (Bowerman 2012, pers. comm.).

Current predator or disease conservation efforts in the Klamath Basin in Oregon are limited to bullfrog control or eradication. U.S. Geological Survey has conducted a bullfrog eradication program on Crane Creek since bullfrogs appeared in 2010. In addition, the BLM has been controlling and reducing bullfrogs and analyzing the gut contents of bullfrogs at all life stages on their Wood River property in Oregon for 6 years. Bullfrog detections and collection have decreased in different areas of the canal in recent years (Roninger 2012, pers. comm.). The number of bullfrogs removed and seen at this site has decreased, and in the last few years, the bulk of the bullfrog removal has been from the north canal and Seven-mile canal areas (outside the Oregon spotted frog site), which is considered to be the strongest source areas for movement into the Oregon spotted frog site (Roninger 2012, pers. comm). However, despite these efforts, bullfrogs continue to persist in these Oregon spotted frog habitats.

Summary of disease and predation—Saprolegnia, Bd, and *Ribeiroia ondatrae* have been found in Oregon spotted frogs and compounded with other stressors, such as UV–B exposure, degradation of habitat quality, or increased predation pressure, may contribute to population declines. Bd and *R. ondatrae*, in particular, infect post-metamorphic frogs and reductions in these life stages are more likely to lead to population declines in pond-breeding amphibians; however, these are not currently known to be causing population declines in Oregon spotted frogs. Disease continues to be a concern, but more information is needed to determine the severity of impact that diseases may have on Oregon spotted frogs. Therefore, based on the best available scientific evidence, we have no information to indicate that disease is a known threat to the Oregon spotted frog.

Introduced fish species prey on tadpoles, negatively affect overwintering habitat, and can significantly threaten Oregon spotted frog populations, especially during droughts, as aquatic habitat areas become smaller and escape cover is reduced. Cushman et al. 2007 (p. 22) states that both Hayes (1997) and Pearl (1999) hypothesized that low water conditions have the potential to increase overlap between Oregon spotted frog and nonnative predators such as brook trout and bullfrogs. Increased overlap in habitat use between Oregon spotted frog and nonnative predators is likely to result in greater loss to predation. Bullfrogs (and likely green frogs) prey on juvenile and adult Oregon spotted frogs and bullfrog larvae can outcompete or displace Oregon spotted frog larvae, effectively reducing all Oregon spotted frog life stages and posing a significant threat to Oregon spotted frogs. At least one nonnative predaceous species occurs within each of the sub-basins currently occupied by Oregon spotted frogs, and most sub-basins have multiple predators. Nine of the 15 occupied sub-basins are currently experiencing moderate to very high impacts due to

predation, and threats from predators are more concentrated in summer/rearing and overwintering habitat. While some predator control occurs in a few sub-basins, this work is not sufficient to ameliorate the threat from predators. Therefore, the threats to Oregon spotted frogs from predation are occurring throughout the entire range of the species and are expected to continue into the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account "those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species . . . ." In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the Oregon spotted frog.

Canadian Laws and Regulations

In Canada, few regulatory mechanisms protect or conserve Oregon spotted frogs. In British Columbia, Oregon spotted frogs are on the Conservation Data Centre's Red List. The Red List includes ecological communities, indigenous species and subspecies that are extirpated, endangered, or threatened in British Columbia; placing taxa on the Red List flags them as being at risk and requiring investigation, but does not confer any protection (British Columbia Ministry of Environment 2012, p. 1).

The Oregon spotted frog was determined to be endangered by the Committee on the Status of Endangered Wildlife in Canada in 1999, with status reexamined and confirmed in 2000 and 2011, and it received an endangered determination under the Canadian Species at Risk Act (SARA) in 2003 (COSFRT 2012, p. 1). SARA makes it an offense to kill, harm, harass, capture or take an individual of a listed species that is extirpated, endangered or threatened; or to possess, collect, buy, sell or trade an individual of a listed species that is extirpated, endangered or threatened, or any part or derivative of such an individual (S.C. ch 29 section 32); or damage or destroy the residence of one or more individuals of a listed endangered or threatened species or of a listed extirpated species if a recovery strategy has recommended its reintroduction (S.C. ch 29 sections 33, 58). The prohibitions on harm to individuals and destruction of residences are limited to Federal lands. Three of the four breeding locations in Canada occur wholly or partially on private lands, which are not subject to SARA prohibitions (COSEWIC 2011, p. 38).

Habitat protection in British Columbia is limited to the Federal Fisheries Act, British Columbia Water Act, and the provincial Riparian Areas Regulation (COSEWIC 2011, p. 38). The Fisheries Act limits activities that can cause harmful alteration, disruption, or destruction of fish habitat, with the primary goal being no net loss of fish habitat. The Water Act is the principal law for managing the diversion and use of provincial water resources. License holders are entitled to divert and use water; store water; construct, maintain, and operate anything capable of or used for the proper diversion, storage, carriage, distribution, and use of the water or the power produced from it; alter or improve a stream or channel for any purpose; and construct fences, screens, and fish or game guards across streams for the purpose of conserving fish and wildlife (Water Act Part 2, section 5). The Riparian Areas Regulation was enacted under Section 12 of the Fish Protection Act and calls on local governments to protect riparian fish habitat during residential, commercial, and industrial development. The habitat protections under these Acts are designed to benefit fish species. As discussed under Factor A, riparian protection and restoration actions designed specifically to benefit fish can be detrimental to Oregon spotted frogs and their habitat.

United States Federal Laws and Regulations

No Federal laws specifically protect the Oregon spotted frog. Section 404 of the Clean Water Act is the primary Federal law that is relevant to the Oregon spotted frog's aquatic habitat. Through a permit process under section 404, the U.S. Army Corps of Engineers (Corps) regulates the discharge of dredged or fill material into waters of the United States, including navigable waters and wetlands that may contain Oregon spotted frogs. However, many actions highly detrimental to Oregon spotted frogs and their habitats, such as irrigation diversion structure construction and maintenance and other activities associated with ongoing farming operations in existing cropped wetlands, are exempt from Clean Water Act requirements.

In Washington and Oregon, current section 404 regulations provide for the issuance of nationwide permits for at least 15 of the 52 categories of activities identified under the nationwide permit program (USACOE 2012a, pp. 1–46), which, for example, could result in the permanent loss of up to 500 ft (150 m) of streambank and 1 ac (0.4 ha) of wetlands (USACOE 2012a, 2012b, 2012c). Projects authorized under a nationwide permit receive minimal public and agency review, and in many cases, agency notification is not required. Individual permits are subject to a more rigorous review, and may be required for nationwide permit activities with more than minimal impacts. Under both the individual and nationwide permit programs, no activities can be authorized if they are likely to directly or indirectly (1) jeopardize the continued existence of a threatened or endangered species, or a species proposed for designation, or (2) destroy or adversely modify the critical habitat of such species, unless section 7 consultation addressing the effects of the proposed activity has been completed. During section 7 consultation, effects to the species itself and aquatic habitat/wetlands would be considered.

For nationwide permits, Corps notification may not be required depending upon the project type and the amount of wetland to be impacted. Impacts to wetlands may be authorized with no compensatory mitigation in some cases. In other cases, wetland impacts may be authorized if the permittee demonstrates the project footprint has been designed to avoid most wetland impacts and unavoidable impacts can be adequately mitigated through wetland creation, restoration, or

enhancement. For example, nationwide permits authorize the discharge of fill material into 0.25 ac (0.1 ha) of wetlands with no requirement for compensatory mitigation. In situations where compensatory wetland mitigation is required, in kind mitigation is preferred but not required.

A Washington State wetland mitigation evaluation study (Johnson *et al.* (2002b, entire) found a resulting net loss of wetlands with or without compensatory mitigation, because wetland creation and enhancement projects were minimally successful or not successful in implementation nor in achieving their ecologically relevant measures. In Washington, mitigation sites within the South Fork Nooksack, Samish, and Black River sub-basins have been designed to improve water quality by planting trees and shrubs. Some of these activities have been conducted in Oregon spotted frog breeding habitat. Therefore, an activity that fills Oregon spotted frog habitat could be mitigated by restoring and or creating riparian habitat suitable for fish, but which is not suitable for frogs. In general, most riparian habitat restoration in Washington is targeted toward salmon species and does not include floodplain depression wetlands.

State Laws and Regulations

Washington—Although there is no State Endangered Species Act in Washington, the Washington Fish and Wildlife Commission has the authority to list species (RCW 77.12.020). State-listed species are protected from direct take, but their habitat is not protected (RCW 77.15.120). The Oregon spotted frog was listed as a State endangered species in Washington in August 1997 (Watson *et al.* 1998, p. 1; 2003, p. 292; WAC 232–12–014). State listings generally consider only the status of the species within the State's borders, and do not depend upon the same considerations as a potential Federal listing. Unoccupied or unsurveyed habitat is not protected unless by County ordinances or other similar rules or laws.

Oregon spotted frogs are a Priority Species under Washington Department of Fish and Wildlife's (WDFW) Priority Habitats and Species Program (WDFW 2008, pp. 68). As a Priority Species, the Oregon spotted frog may receive some protection of its habitat under environmental reviews of applications for county or municipal development permits and through implementation of Priority Habitats and Species management recommendations. Priority Habitat and Species Management Recommendations for this species include maintaining stable water levels and natural flow rates; maintaining vegetation along stream banks or pond edges; avoidance of introducing nonnative amphibians, reptiles, or fish; avoidance of removing algae from rearing areas; avoiding alteration of muddy substrates; controlling stormwater runoff away from frog habitat; avoiding application of pesticides in or adjacent to water bodies used by Oregon spotted frogs; and surveying within the historical range of the species (Nordstrom and Milner 1997, pp. 6–5–6–6).

The Clean Water Act of 1972 requires States to set water quality standards to protect beneficial uses, identify sources of pollution in waters that fail to meet State water quality standards (Section 303(d)), and to develop water quality plans to address those pollutants. Although the Clean Water Act is a Federal law, authority for implementing this law has been delegated to the State. Washington State adopted revised water quality standards for temperature and intergravel dissolved oxygen in December 2006, and the Environmental Protection Agency (EPA) approved these revised standards in February 2008 (EPA 2008). Although candidate species were not the focus, proponents believed that the proposed standards would likely protect native aquatic species. The temperature standards are intended to restore thermal regimes to protect sensitive native salmonids, and, if temperature is not a limiting factor in sustaining viable salmonid populations, other native species would likely be protected (EPA 2007, p. 14).

The State has developed water quality plans for the Lower Nooksack, Samish, and Upper Chehalis Rivers; however, as of 2008 (most recent freshwater listing). portions of the Sumas River; Black Slough in the S.F. Nooksack River sub-basin; portions of the Samish River; segments of the Black River; segments of Dempsey, Allen, and Beaver Creeks in the Black River drainage, and a segment in the upper portion of Trout Lake Creek were listed by the Washington Department of Ecology (WDOE) as not meeting water quality standards for a variety of parameters, including temperature, fecal coliform, pH, and dissolved oxygen (see Factor E). In addition, for the streams/rivers where the temperature or fecal coliform standard is exceeded, the water quality plans call for planting trees and shrubs and excluding cattle, which would not be conducive to the creation and maintenance of early seral stage conditions (i.e., emergent vegetation) necessary for Oregon spotted frog egg-laying habitat (see Factor A).

Oregon—Oregon has a State Endangered Species Act, but the Oregon spotted frog is not State listed. Although this species is on the Oregon sensitive species list and is considered critically sensitive, this designation provides little protection (ODFW 1996, OAR 635–100–0040). Once an Oregon "native wildlife" species is federally listed as threatened or endangered, it is included as a State-listed species and receives some protection and management, primarily on State owned or managed lands (OAR 635–100–0100 to OAR 635–100–0180; ORS 496.171 to ORS 496.192).

Although the Clean Water Act is a Federal law, authority for implementing this law has been delegated to the State. Oregon adopted revised water quality standards for temperature, intergravel dissolved oxygen, and anti-degradation in December 2003, and EPA approved these revised standards in March 2004 (EPA 2004). Although candidate species were not the focus, it was believed that the proposed standards would likely protect native aquatic species. The proposed temperature standards are intended to restore thermal regimes to protect sensitive native salmonids and, if temperature is not a limiting factor in sustaining viable salmonid populations, other native species would likely be protected (EPA 2004). In December 2012, EPA approved additions to Oregon's 303(d) list, which includes waterbodies that do not meet water quality standards for multiple parameters (ODEQ 2012). Many of the streams associated with Oregon spotted frog habitat are 303(d) listed by the Oregon Department of Environmental Quality (see Factor E).

Oregon's Removal-Fill Law (ORS 196.795–990) requires people who plan to remove or fill material in waters of the State to obtain a permit from the Department of State Lands. Wetlands and waterways in Oregon are protected by both State and Federal laws. Projects impacting waters often require both a State removal-fill permit, issued by the Department of State Lands (DSL), and a Federal permit issued by the U.S. Army Corps of Engineers (Corps). A permit is required only if 50 cubic yards (cy) or more of fill or removal will occur. The removal fill law does not regulate the draining of wetlands (see Local Laws and Regulations below).

Local Laws and Regulations

Washington—The Washington Shoreline Management Act's purpose is "to prevent the inherent harm in an uncoordinated and piecemeal development of the State's shorelines." Shorelines are defined as: all marine waters; streams and rivers with greater

than 20 cfs (0.6 cms) mean annual flow; lakes 20 ac or larger; upland areas called shorelands that extend 200 ft (61 m) landward from the edge of these waters; and the following areas when they are associated with one of the previous shorelines: biological wetlands and river deltas, and some or all of the 100-year floodplain, including all wetlands within the 100-year floodplain. Each city and county with "shorelines of the state" must prepare and adopt a Shoreline Master Program (SMP) that is based on State laws and rules but is tailored to the specific geographic, economic, and environmental needs of the community. The local SMP is essentially a shoreline-specific combined comprehensive plan, zoning ordinance, and development permit system.

The Washington State Growth Management Act of 1990 requires all jurisdictions in the State to designate and protect critical areas. The State defines five broad categories of critical areas, including (a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. The County Area Ordinance (CAO) is the county regulation that most directly addresses protection of the critical areas mapped by each county.

Frequently, local government will have adopted zoning regulations and comprehensive land use plans that apply both within and outside shoreline areas. When these codes are applied within the shoreline area, there may be differences in the zoning regulations and the plan policies as compared with the regulations and policies of the SMP. Because the SMP is technically a State law (i.e., WAC), the requirements of the SMP will prevail in the event of a conflict with the local zoning or plan. Generally, however, a conflict will not exist if the zoning or plan requirements are more protective of the shoreline environment than the SMP. For example, if the zoning district allows a density of one unit per acre, and the SMP allows a density of two units per, the requirements of the more restrictive code would prevail.

Within each county in Washington, the SMP and CAO are the regulations that most directly address protection of Oregon spotted frog habitat. A brief discussion of the current SMPs and CAOs for the five counties where Oregon spotted frogs are known to occur follows.

Whatcom County: Whatcom County updated its Shoreline Management Program in 2008. Based on interpretation of the 2008 SMP, the known Oregon spotted frog occupied locations in the Lower Chilliwack or South Fork Nooksack River sub-basins are not "shorelines." Samish River within Whatcom County is designated as Conservancy Shoreline that provides specific allowed uses and setbacks. Presently, the two primary uses of this area are agricultural and residential, both of which are allowed under the SMP, with some restrictions. Restrictions include shoreline setbacks of 15–20 ft (4.5–6.1 m) and allowance of no more than 10 percent impervious surface (although it is uncertain whether this is applicable on a per-project, per-acre, or per-basin basis). One of the allowed uses is restoration, which is focused on recovery of salmon and bull trout. Many of the restoration actions targeting salmon and bull trout recovery are not conducive to maintaining early seral vegetation stages necessary to maintain Oregon spotted frog egg-laying habitat. Some activities would require a permit that must be reviewed and approved by Whatcom County and the Washington Department of Ecology for consistency.

The Whatcom County CAO that is the most relevant to Oregon spotted frogs applies to wetland areas, which are present in the three sub-basins where Oregon spotted frogs occur in this county. Activities in all wetlands are regulated unless the wetland is 1/10 ac or smaller in size; however, activities that can destroy or modify Oregon spotted frog habitat can still occur under the existing CAO. Activities that are conditionally allowed include surface water discharge; storm water management facilities; storm water conveyance or discharge facilities; public roads, bridges, and trails; single-family developments; and onsite sewage disposal systems. Buffers and mitigation are required, but can be adjusted by the county. In general, wetlands and the associated wetland buffer CAOs target an avoidance strategy, which may not be beneficial to the maintenance of Oregon spotted frog early seral stage habitat on a long-term basis in areas where reed canarygrass is present. Within the areas occupied by Oregon spotted frogs in the three sub-basins, all egg-laying habitat is within seasonally flooded areas, which may or may not be defined as wetlands. Rather than an avoidance strategy, these areas may require management actions to remove reed canarygrass in order to maintain egg-laying habitat and provide for Oregon spotted frog persistence. Within Whatcom County, protective measures for Oregon spotted frogs are afforded under both the SMP and the CAOs, although no measures are specifically directed toward this species.

Skagit County: Skagit County's revisions to its SMP are under review and anticipated to be adopted by June 2013 (*www.skagitcounty.net*). Until the revised SMP is approved by WDOE, the 1976 SMP remains in effect. The portion of the Samish River in Skagit County is designated as Rural Shoreline Area, and typified by low overall structural density, and low to moderate intensity of agriculture, residential development, outdoor recreation, and forestry operations uses. This designation is intended to maintain open spaces and opportunities for recreational activities and a variety of uses compatible with agriculture and the shoreline environment. Presently, the two primary uses of the Samish River where Oregon spotted frog occur are agricultural and residential. With some restrictions, almost all activities are allowed within this designation, and the draining of wetlands is not prohibited. Agricultural users are encouraged to retain vegetation along stream banks. Developments and sand and gravel extractions are allowed provided they are compatible with agricultural uses. These types of activities can be detrimental to Oregon spotted frog egg-laying habitat.

The Skagit County CAO designates lands adjacent to the Samish River where Oregon spotted frogs are known to occur as Rural Resource or Agricultural. These land designations and the associated allowed activities are intended to provide some protection of hydrological functions, but they are primarily designed to retain a rural setting (low residential density) or to ensure the stability and productivity of agriculture and forestry in the county, which has some benefits to the Oregon spotted frog.

Thurston County: Thurston County's revision of its SMP is currently under way, and until the revised SMP is completed and approved, the 1990 SMP remains in effect. The majority of the areas within the Black River that are known to be occupied by Oregon spotted frogs are either undesignated (primarily the tributaries) or designated as Natural or Conservancy Environments. Two small areas are designated as Urban at the town of Littlerock and along Beaver Creek. Fish Pond Creek, a known Oregon spotted frog breeding location, is within the designated Urban Growth Area. Within the Natural Environment designation areas, most activity types are prohibited, although livestock grazing, low-intensity recreation, low-density (1/10 ac)

residences, and conditional shoreline alterations are allowed. Within Conservancy Environments, most activities are conditionally allowed, and would require a permit that must be reviewed and approved by Thurston County and WDOE for consistency with the SMP.

Thurston County approved a revision to the CAO in July 2012. The Thurston County CAO that is the most relevant to Oregon spotted frogs addresses Wetlands, although the 100-year floodplain and Channel Migration Zone designations are also applicable. Activities in most wetlands are regulated, other than those less than or equal to 1,000 square feet in size. As a result, activities that can destroy or modify Oregon spotted frog habitat may still occur, such as asphalt batch plant construction, new agricultural uses, boat ramps, docks, piers, floats, bridge or culvert projects, clearing-grading-excavation activities, and dredging/removal operations. Buffers and mitigation are required, but can be adjusted by the county. In general, wetlands and the associated wetland buffer CAOs strive toward a no-management approach, which may not be beneficial to the maintenance of Oregon spotted frog early seral stage habitat on a long-term basis. Within the areas occupied by Oregon spotted frogs in the Black River, all egg-laying habitat is within seasonally flooded areas, which may or may not be defined as wetlands. Rather than an avoidance strategy, these areas may require management actions to remove reed canarygrass in order to maintain egg-laying habitat. Within Thurston County, protective measures for Oregon spotted frogs are afforded under both the SMP and CAOs, although no measures are specifically directed toward this species.

Skamania County: Skamania County's revision to its SMP is under way, and until revised, the 1980 SMP is in effect. According to the 1980 SMP, Trout Lake Creek is not a shoreline of Skamania County. The portions of Trout Lake Creek that are in Skamania County have no designated critical areas. Therefore, the SMP and CAO are not applicable to Oregon spotted frog habitat in Skamania County.

Klickitat County: Klickitat County's SMP was adopted in 1998 and revised in 2007. Based on the 2007 SMP, only Trout Lake Creek is considered a "shoreline," and within the area occupied by Oregon spotted frogs, regulations for both Natural and Conservancy Environments apply. Within the Natural Environments, most activity types are prohibited, except for nonintensive pasturing or grazing, recreation (access trails/passive uses), bulkheads (conditional uses), and shoreline alterations (conditional). Within Conservancy Environments, most activities are conditionally allowed, and require a permit that must be reviewed and approved by Klickitat County and WDOE for consistency.

Klickitat County's CAO was adopted in 2001 and amended in 2004. Mapping of critical areas was not available, so our analysis includes only wetlands provisions. Activities in all wetlands greater than 2,500 square ft (232 square m) in size are regulated; however, some activities are exempted, including agricultural uses and maintenance of surface water systems (for example, irrigation and drainage ditches). These types of activities can destroy or modify Oregon spotted frog habitat. Buffers and mitigation are required, but can be adjusted by the county. In general, wetlands and the associated wetland buffer CAOs strive toward a no-management approach, which may result in the loss of Oregon spotted frog early seral stage habitat on a long-term basis. Within the areas occupied by Oregon spotted frogs in Klickitat County, all egg-laying habitat is within seasonally flooded areas, which may or may not be defined as wetlands. Rather than an avoidance strategy, these areas may require management actions to remove reed canarygrass in order to maintain egg-laying habitat. Within Klickitat County, protective measures for Oregon spotted frogs are afforded under both the SMP and CAOs, although no measures are specifically directed toward this species.

Oregon—In Oregon, the Land Conservation and Development Commission in 1974 adopted Goal 5 as a broad statewide planning goal that covers more than a dozen resources, including wildlife habitats and natural areas. Goal 5 and related Oregon Administrative Rules (Chapter 660, Divisions 16 and 23) describe how cities and counties are to plan and zone land to conserve resources listed in the goal. Goal 5 is a required planning process that allows local governments to make decisions about land use regulations and whether to protect the individual resources based upon potential conflicts involving economic, social, environmental, and energy consequences. It does not require minimum levels of protections for natural resources, but does require weighing the various impacts to resources from land use.

Counties in Oregon within the range of Oregon spotted frog may have zoning ordinances that reflect protections set forth during the Goal 5 planning process. The following will briefly discuss these within each county where Oregon spotted frogs are currently known to occur.

Deschutes County: In accordance with the State-wide planning process discussed above (State Regulations and Laws—*Oregon*), Deschutes County completed a Comprehensive Plan in 1979, which was updated in 2011, although Oregon spotted frog habitat is not included within the Comprehensive Plan as a Goal 5 resource site. The Comprehensive Plan is implemented primarily through zoning. Deschutes County zoning ordinances that regulate the removal and fill of wetlands (18.128.270), development within the floodplain (18.96.100) and siting of structures within 100 ft (30 m) of streams may provide indirect protections to Oregon spotted frog habitat on private lands along the Upper and Little Deschutes Rivers. The Deschutes County zoning regulations do not regulate the draining of wetlands or hydrologic modifications, and the Oregon Division of State Lands (DSL) regulates only actions that involve more than 50 cubic yards (cy) (38 m^3) of wetland removal. Therefore, development associated with small wetland removals is neither regulated under the Deschutes County Comprehensive Plan nor Oregon DSL (See DSL discussion above), which could negatively impact Oregon spotted frog habitat.

Klamath County: Article 57 of the Klamath County Comprehensive Plan Policy (KCCPP) and associated Klamath County Development Code mandates provisions to preserve significant natural and cultural resources; address the economic, social, environmental, and energy consequences of conflicting uses upon significant natural and cultural resources; and permit development in a manner that does not adversely impact identified resource values (KCDC 2005, p. 197). This plan identifies significant wetlands, riparian areas, Class I streams, and fish habitat as a significant resource and identifies potentially conflicting uses including shoreline development or alteration, removal of riparian vegetation, filling or removing material, in-stream modification, introduction of pollutants, water impoundments, and drainage or channelization (KCCPP 2005, pp. 33–34, KCDC 2005, p. 199). All land uses that represent these conflicting uses are reviewed and applicants must clearly demonstrate that the proposed use will not negatively impact the resource (KCDC 2005, p. 200; KCCPP 2005, p. 25). However, all accepted farm

practices or forest practices are exempt from this provision (KCDC 2005, p. 198), including (but not limited to) buildings, wineries, mineral exploration, and under certain circumstances, the establishment of golf courses and agricultural and commercial industries (KCDC 2005, pp. 160–163; 176–177). If any of these practices disturb less than 50 cy (38.2 m^3) of wetlands, they are not regulated by either KC CPP or Oregon DSL (See DSL discussion above). Therefore, the development associated with small wetland removals could negatively impact Oregon spotted frog habitat.

Jackson County: No specific county regulations pertain to wetlands within Jackson County ordinances. This county relies on the Oregon DSL to regulate the development and protection of wetlands (see DSL discussion above) (Skyles 2012, pers. comm.).

Summary of Existing Regulatory Mechanisms

The existing regulatory mechanisms described above are not sufficient to reduce or remove threats to the Oregon spotted frog habitat, particularly habitat loss and degradation. The lack of essential habitat protection under Federal, State, Provincial, and local laws leaves this species at continued risk of habitat loss and degradation in British Columbia, Washington, and Oregon. The review of impacts to wetlands under the Clean Water Act is minimal, and several occupied sub-basins in Washington and Oregon do not meet water quality standards. In many cases, laws and regulations that pertain to retention and restoration of wetland and riverine areas are designed to be beneficial to fish species, specifically salmonids, resulting in the unintentional elimination or degradation of Oregon spotted frog habitat. For example, CAOs in some Washington counties prohibit grazing within the riparian corridor, which is an active management technique used to control invasive reed canarygrass.

Additional regulatory flexibility would be desirable for actively maintaining habitat in those areas essential for the conservation of Oregon spotted frog. We note that the area where these potential incompatibilities apply are limited in scope (i.e., approximately 5,000 ac (2,000 ha) and 20 mi (33 km) along the Black Slough and Sumas, Samish, and Black Rivers in Washington), because the area inhabited by Oregon spotted frogs is quite small relative to the extensive range of salmonids. In other cases, no regulations address threats related to the draining or development of wetlands or hydrologic modifications, which can eliminate or degrade Oregon spotted frog habitat. In summary, degradation of habitat for the Oregon spotted frog is ongoing despite existing regulatory mechanisms. These regulatory mechanisms have been insufficient to significantly reduce or remove the threats to the Oregon spotted frog.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Site Size and Isolation/Population Turnover Rates/Breeding Effort Concentrations and Site Fidelity

Most species' populations fluctuate naturally in response to weather events, disease, predation, or other factors. These factors, however, have less impact on a species with a wide and continuous distribution. In addition, smaller, isolated populations are generally more likely to be extirpated by stochastic events and genetic drift (Lande 1988, pp. 1456–1458). Many of the Oregon spotted frog breeding locations comprise less than 50 adult frogs, are isolated from other breeding locations, and may already be stressed by other factors, such as drought or predation, and are then more vulnerable to random, naturally occurring events. Where Oregon spotted frog locations have small population sizes and are isolated, their vulnerability to extirpation from factors such as fluctuating water levels, disease, and predation increases.

Funk *et al.* (2008, p. 205) found low genetic variation in Oregon spotted frogs, which likely reflects small effective population sizes, historical or current genetic bottlenecks, and/or low gene flow among populations. Genetic work by Blouin *et al.* (2010) indicates low genetic diversity within and high genetic differentiation among each of the six Oregon spotted frog groups (British Columbia, Chehalis and Columbia drainages, Camas Prairie, central Oregon Cascades, and the Klamath Basin). This pattern of genetic fragmentation is likely caused by low connectivity between sites and naturally small populations sizes. Gene flow is very limited between locations, especially if separated by 6 mi (10 km) or more, and at the larger scale, genetic groups have the signature of complete isolation (Blouin *et al.* 2010, p. 2187). At least two of the locations sampled by Blouin *et al.* (2010) (Camas Prairie and Trout Lake) show indications of recent genetic drift.

Modeling across a variety of amphibian taxa suggests that pond-breeding frogs have high temporal variances of population abundances and high local extinction rates relative to other groups of amphibians, with smaller frog populations undergoing disproportionately large fluctuations in abundance (Green 2003, pp. 339–341). The vulnerability of Oregon spotted frog egg masses to fluctuating water levels (Hayes *et al.* 2000, pp. 10–12; Pearl and Bury 2000, p. 10), the vulnerability of post-metamorphic stages to predation (Hayes 1994, p. 25), and low overwintering survival (Hallock and Pearson 2001, p. 8) can contribute to relatively rapid population turnovers, suggesting Oregon spotted frogs are particularly vulnerable to local extirpations from stochastic events and chronic sources of mortality (Pearl and Hayes 2004, p. 11). The term "rapid population turnovers" refers to disproportionately large fluctuations in abundance.

Oregon spotted frogs concentrate their breeding efforts in relatively few locations (Hayes *et al.* 2000, pp. 5–6; McAllister and White 2001, p. 11). For example, Hayes *et al.* (2000, pp. 5–6) found that 2 percent of breeding sites accounted for 19 percent of the egg masses at the Conboy Lake NWR. Similar breeding concentrations have been found elsewhere in Washington and in Oregon. Moreover, Oregon spotted frogs exhibit relatively high fidelity to breeding locations, using the same seasonal pools every year and often using the same egg-laying sites. In years of extremely high or low water, the frogs may use alternative sites. For example, the Trout Lake Creek and Conboy Lake frogs return to traditional breeding areas every year, but the egg-laying sites change based on water depth at the time of breeding. A stochastic event that impacts any one of these breeding locations could significantly reduce the Oregon spotted frog population associated with that sub-basin.

Egg mass count data suggests a positive correlation and significant link between site size and Oregon spotted frog breeding population size (Pearl and Hayes 2004, p. 12). Larger sites are more likely to provide the seasonal microhabitats required by Oregon spotted frogs, have a more reliable prey base, and include overwintering habitat. The minimum amount of habitat thought to be required to maintain an Oregon spotted frog population is about 10 ac (4 ha) (Hayes 1994, Part II pp. 5 and 7). Smaller sites generally have a small number of frogs and, as described above, are more vulnerable to extirpation. Some sites in Oregon are at or below the 10-ac (4-ha) threshold; however, Pearl and Hayes (2004, p. 14)

believe that these sites were historically subpopulations within a larger breeding complex and Oregon spotted frogs may only be persisting in these small sites because the sites exchange migrants or seasonal habitat needs are provided nearby.

Movement studies suggest Oregon spotted frogs are limited in their overland dispersal and potential to recolonize sites. Most Oregon spotted frog movements are associated with aquatic connections (Watson *et al.* 2003, p. 295; Pearl and Hayes 2004, p. 15). However, within 10 of the 15 occupied sub-basins, one or more of the known breeding locations are isolated and separated by at least 3.1 mi (5 km) (see Life History) and within 9 of the 15 sub-basins, one or more of the known breeding locations are isolated and separated by at least 6 mi (10 km), the distance over which gene flow is extremely low (see Taxonomy). In many instances the intervening habitat lacks the substantial hydrological connections that would allow Oregon spotted frog movement. In addition, widespread predaceous fish introductions within these corridors pose a very high risk to frogs that do try to move between known locations. Therefore, should a stochastic event occur that results in the extirpation of an area, natural recolonization is unlikely unless another known location is hydrologically connected and within 3.1 mi (5 km).

In British Columbia, the distance between the Morris Valley, Mountain Slough, and Maria Slough locations is about 8 km and each of these locations is 50–60 km from Maintenance Detachment Aldergrove, making all of the known populations isolated from one another (COSFRT 2012, p. 15). In addition, suitable wetland habitat between any two of these locations is highly fragmented, and movement between populations is unlikely to occur. Based on this information and the small number of breeding individuals (less than 350), the Canadian Oregon spotted frog recovery team found that the risk from demographic and environmental stochastic events is high and could result in further local extirpations (COSFRT 2012, p. v).

In five of the six extant sub-basins in Washington, Oregon spotted frogs are restricted to one watershed within the sub-basin. Within four of these sub-basins (South Fork Nooksack, Samish, White Salmon, and Middle Klickitat Rivers), the known egg-laying locations are aquatically connected, such that movements could occur and facilitate genetic exchange. In the Lower Chilliwack, Oregon spotted frogs are currently known to occur from only one egg-laying location in one watershed (Sumas River). There may be additional locations within 3.1 mi (5 km) that are aquatically connected, but further surveys would be needed in order to make this determination. In the Black River, known egg-laying locations occur along the mainstem, as well as in six tributaries. Oregon spotted frogs in Fish Pond Creek are likely isolated from Oregon spotted frogs in the rest of the Black River system due to changes in the outflow of Black Lake. Black Lake Ditch was constructed in 1922, and a pipeline at the outlet of the Black Lake to Black River was constructed in the 1960s; both of these structures changed the flow such that Black Lake drains to the north, except during high flows rather than down the Black River as it did historically (Foster Wheeler Environmental Corporation 2003, pp. 2, 3, 5, 24). Oregon spotted frogs in the other five tributaries may also be isolated from each other because there is little evidence that the frogs use the Black River to move between tributaries, although egg-laying locations in these tributaries are aquatically connected via the Black River.

In Oregon, two of the eight extant sub-basins contain single, isolated populations of Oregon spotted frogs: Lower Deschutes River (i.e., Camas Prairie) and Middle Fork Willamette River (i.e., Gold Lake). The McKenzie River sub-basin contains two populations of Oregon spotted frogs that are in close proximity but have no apparent hydrologic connection to each other or to populations in other sub-basins. In the Deschutes River Basin, Oregon spotted frog egg-laying sites are found throughout two sub-basins: the Upper Deschutes River and the Little Deschutes River. These two sub-basins are aquatically connected at the confluence of the Little Deschutes River and the mainstem Deschutes River below Wickiup Reservoir. Genetic exchange likely occurs between Oregon spotted frogs on the lower reach of the Little Deschutes River and those along the Deschutes River at Sunriver where breeding occurs within 3.1 mi (5 km). The Wickiup dam and regulated flows out of the reservoir limit connectivity for Oregon spotted frogs to move within the Upper Deschutes River sub-basin, such that connectivity between the populations above and below the dam are unlikely. Only four egg-laying locations occur below Wickiup Reservoir, two of which are within 6 mi (10 km) but separated by a waterfall along the Deschutes River. Above Wickiup Reservoir, there are approximately six clusters of egg-laying sites that may be isolated from each other by lack of hydrologic connectivity (i.e., lakes without outlets) or distances greater than 6 mi (10 km).

In the Little Deschutes River sub-basin, approximately 23 known egg-laying locations are within five watersheds: Upper, Middle and Lower Little Deschutes River; Crescent Creek; and Long Prairie. Most egg-laying locations throughout the Little Deschutes River sub-basin are within 6 mi (10 km) of each other, and, given that much of the private land is unsurveyed, the distance between breeding areas is likely smaller. In the lower reach of the Little Deschutes River near the confluence with the Deschutes River where more extensive surveys have been conducted, egg-laying sites are within 3.1 mi (5 km). Wetland complexes are extensive and continuous along the Little Deschutes River and its tributaries, which likely provides connectivity between breeding areas. Regulated flows out of Crescent Lake may affect the aquatic connectivity between egg-laying locations, although the impacts to Oregon spotted frog connectivity are not fully understood. The Long Prairie watershed also has been hydrologically altered by the historical draining of wetlands and ditching to supply irrigation water. Connectivity between three known egg-laying locations within this watershed is likely affected by the timing and duration of regulated flows, and historic ditching for irrigation.

Oregon spotted frogs are found in six watersheds within three sub-basins of the Klamath River Basin in Oregon (Williamson River, Upper Klamath Lake, and Upper Klamath). Within the Williamson River sub-basin, individuals in the Jack Creek watershed are isolated from other populations due to lack of hydrologic connectivity. The Klamath Marsh and Upper Williamson populations are aquatically connected such that movements could occur and facilitate genetic exchange, although this presumed gene flow has not been demonstrated by recent genetic work (Robertson and Funk 2012, p. 10).

The Upper Klamath Lake sub-basin populations are found in two watersheds: Wood River and Klamath Lake. Populations within and adjacent to the Wood River are aquatically connected and genetically similar (Robertson and Funk 2012, p. 10). However, while the Wood River populations and the Klamath Lake populations have genetic similarities (Robertson and Funk 2012, p. 10, 11), altered hydrologic connections,

distances (>6 mi (terrestrial) (10km)), and invasive species, have created inhospitable habitat. These conditions make it unlikely that individual frogs are able to move between watersheds or establish additional breeding complexes along the current hydrologic system. The only potential for hydrologic connectivity and movement between populations in the Klamath Lake populations is between Sevenmile Creek and Crane Creek, and between the individual breeding complexes on the Wood River in the Wood River watershed. The Upper Klamath sub-basin's Parsnip Lakes and Buck Lake populations are isolated from each other and the other Klamath Basin populations (Robertson and Funk 2012, p. 5) due to great hydrological distances (> 20 mi (32 km)) and barriers (inhospitable habitat and dams).

Site size and isolation/population turnover rates/breeding effort concentrations and site fidelity conclusion— Historically, Oregon spotted frogs were likely distributed throughout a watershed, occurred in multiple watersheds within a sub-basin, and adjusted their breeding areas as natural disturbances, such as flood events and beaver activity, shifted the location and amount of appropriate habitat. Currently, Oregon spotted frogs are restricted in their range within most occupied sub-basins (in some cases only occurring in one watershed), and breeding areas are isolated (greater than dispersal distance apart). Many of the Oregon spotted frog breeding locations across the range comprise less than 50 adult frogs and are isolated from other breeding locations. Genetic work indicates low genetic diversity within and high genetic differentiation among the six Oregon spotted frog groups. Each of these groups have the signature of complete isolation, and two show indications of recent genetic drift (a change in the gene pool of a small population that takes place strictly by chance). Oregon spotted frogs can experience rapid population turnovers because of their breeding location fidelity and vulnerability to fluctuating water levels, predation, and low overwinter survival. A stochastic event at any one of these small, isolated breeding locations could significantly reduce the Oregon spotted frog population associated with that sub-basin. Therefore, based on the best information available, we consider small site size and isolation and small population sizes to be a threat to the Oregon spotted frog.

Water Quality and Contamination

Poor water quality and water contamination are playing a role in the decline of Oregon spotted frogs, and water quality concerns have been specifically noted within six of the occupied sub-basins (see Table 2 and Factor D), although data specific to this species are limited. Because of this limitation, we have examined responses by similar amphibians as a surrogate for impacts on Oregon spotted frogs. Studies comparing responses of amphibians to other aquatic species have demonstrated that amphibians are as sensitive as, and often more sensitive than, other species when exposed to aquatic contaminants (Boyer and Grue 1995, p. 353). Immature amphibians absorb contaminants during respiration through the skin and gills. They may also ingest contaminated prey. Pesticides, heavy metals, nitrates and nitrites, and other contaminants introduced into the aquatic environment from urban and agricultural areas are known to negatively affect various life stages of a wide range of amphibian species, including ranid frogs (Hayes and Jennings 1986, p. 497; Boyer and Grue 1995, pp. 353–354; Hecnar 1995, pp. 2133–2135; Materna *et al.* 1995, pp. 616–618; NBII 2005, Mann *et al.* 2009, p. 2904). Exposure to pesticides can lower an individual's immune function, which increases the risk of disease or possible malformation (Stark 2005, p. 21; Mann *et al.* 2009 pp. 2905, 2909). In addition, it has been demonstrated that some chemicals reduce growth and delay development.

A reduction of growth or development would prolong an individual's larval period, thus making it more susceptible to predators for a longer period of time or resulting in immobility during periods of time when movement between habitats may be necessary (Mann *et al.* 2009, p. 2906). Many of the described effects from pesticides described are sublethal but ultimately may result in the mortality of the exposed individuals as described above. Furthermore, the results of several studies have suggested that, while the impacts of individual chemicals on amphibians are sublethal, a combination or cocktail of a variety of chemicals may be lethal (Mann *et al.* 2009, p. 2913; Bishop *et al.* 2010, p. 1602). The use of pesticides may be occurring throughout the range of the Oregon spotted frog due to the species' overlap with agricultural and urban environments; however, information regarding the extent, methods of application, and amounts applied are not available. Therefore, we are unable to make an affirmative determination at this time that pesticides are a threat.

Methoprene, a chemical widely applied to wetlands for mosquito control, was historically linked to abnormalities in southern leopard frogs (*Lithobates utricularia*), including completely or partially missing hind limbs, discoloration, and missing eyes. Missing eyes and delayed development in northern cricket frogs (*Acris crepitans*) have also been linked to methoprene (Stark 2005, p. 20). However, a recent scientific literature review suggests that methoprene is not ultimately responsible for frog malformations (Mann *et al.* 2009, pp. 2906–2907). The findings of this review suggest that, in order for malformations to occur, the concentration of chemical in the water would induce mortality (Mann *et al.* 2009, p. 2906). Therefore, based on the best available information, we do not consider methoprene to be a threat to Oregon spotted frogs.

Although the effects on amphibians of rotenone, which is used to remove undesirable fish from lakes, are poorly understood, mortality likely occurs at treatment levels used on fish (McAllister *et al.* 1999, p. 21). The role of rotenone treatments in the disappearance of Oregon spotted frogs from historical sites is unknown; however, some studies indicate that amphibians might be less sensitive than fish and might be capable of recovering from exposure to rotenone (Mullin *et al.* 2004, pp. 305–306; Walston and Mullin 2007, p. 65). However, these studies did not measure the effects on highly aquatic amphibians, like the Oregon spotted frog. In fall of 2011, ODFW used rotenone to remove goldfish from a small pond adjacent to Crane Prairie Reservoir. In April 2012, approximately 40 spotted frog egg masses were located in the pond, where there had been no prior record of Oregon spotted frog occupancy in the past (Wray 2012, pers. comm.). No rotenone treatments in Cascade lakes occupied by Oregon spotted frog are planned in the near future (Hodgson 2012, pers. comm.), and to date, in the Upper Klamath Lake sub-basin, no fish killing agents have been applied within Oregon spotted frog habitat (Banish 2012, pers. comm.). Therefore, based on the best available information, we do not consider rotenone to be a threat to Oregon spotted frogs.

Water acidity (low pH) can inhibit fertilization and embryonic development in amphibians, reduce their growth and survival through physiological alterations, and produce developmental anomalies (Hayes and Jennings 1986, pp. 498–499; Boyer and

Grue 1995, p. 353). A low pH may enhance the effects of other factors, such as activating heavy metals in sediments. An elevated pH, acting singly or in combination with other factors such as low dissolved oxygen, high water temperatures, and elevated un-ionized ammonia levels, may have detrimental effects on developing frog embryos (Boyer and Grue 1995, p. 354).

Marco *et al.* (1999, p. 2838) demonstrated the strong sensitivity of Oregon spotted frog tadpoles to nitrate and nitrite ions, and suggested that nitrogen-based chemical fertilizers may have contributed to the species' decline in the lowland areas of its distribution. Recommended levels of nitrates and nitrites in drinking water are moderately to highly toxic for Oregon spotted frogs, indicating that EPA water quality standards do not protect sensitive amphibian species (Marco *et al.* 1999, p. 2838). In the Marco *et al.* study, Oregon spotted frog tadpoles did not show a rapid adverse effect to nitrate ions, but at day 15 of exposure they reflected high sensitivity followed by synchronous death. Many public water supplies in the United States contain levels of nitrate that routinely exceed concentrations of 10 milligrams of nitrate per liter (mg/L); the median lethal concentrations for aquatic larvae of the Oregon spotted frog is less than 10 mg/L (Marco *et al.* 1999, p. 2838).

In Washington, portions of the Sumas River; Black Slough in the S.F. Nooksack sub-basin; portions of the Samish River; segments of the Black River; segments of Dempsey, Allen, and Beaver Creeks in the Black River sub-basin; and a segment in the upper portion of Trout Lake Creek are listed by the Washington Department of Ecology as not meeting water quality standards for a variety of parameters, including temperature, fecal coliform, pH, and dissolved oxygen. In Oregon, many of the streams associated with Oregon spotted frog habitat are listed by the Oregon Department of Environmental Quality as not meeting water quality standards for multiple parameters: (1) Little Deschutes River—temperature, dissolved oxygen, chlorophyll A, pH, aquatic weeds or algae; (2) Deschutes River—temperature, dissolved oxygen, turbidity, sedimentation; (3) Middle Fork Willamette River—sedimentation; (4) Upper Klamath—temperature; and (5) Williamson River—sedimentation.

Johnson and Chase (2004, p. 522) point to elevated levels of nutrients (particularly phosphorus) from agricultural fertilizers and cattle grazing in freshwater ecosystems as causing shifts in the composition of aquatic snails from small species to larger species. These larger species serve as intermediate hosts for a parasite (*Ribeiroia ondatrae*), which causes malformations in amphibians (see Disease above). Elevated sources of nutrient inputs into river and wetland systems can also result in eutrophic (nutrient-rich) conditions, characterized by blooms of algae that can produce a high pH and low dissolved oxygen. Increased eutrophic conditions in the Upper Klamath Lake sub-basin may have contributed to the absence of Oregon spotted frogs. Beginning in 2002, algal blooms, poor water quality, and low dissolved oxygen were documented in Jack Creek, during which a decline in Oregon spotted frog reproduction was also documented (Oertley 2005, pers. comm.). Although more research is needed, Johnson et al. (2002a; Johnson and Chase 2004) state that eutrophication associated with elevated nitrogen (and phosphorus) has been linked with increased snail populations, which in turn can be linked to parasites that use frogs such as the Oregon spotted frog as alternate hosts (see discussion under "Disease and Predation" above for additional information).

In British Columbia, Oregon spotted frogs at Morris Valley, Mountain Slough, and Maria Slough are in largely agricultural areas. Agricultural runoff includes fertilizers (including manure), and runoff or percolation into the ground water from manure piles (Rouse *et al.* 1999), and spraying of agricultural chemicals such as pesticides or insecticides (including Btk, or *Bacillus thuringiensis* bacterium) or fungicides (used by blueberry producers), including wind-borne chemicals. Water-borne sewage and non-point source runoff from housing and urban areas that include nutrients, toxic chemicals, and/or sediments may also be increasing in intensity. Additional sources of contaminants may include chemical spraying during forestry activities, maintenance of power line corridors, or disruption of normal movements of nutrients by forestry activities (Canadian Recovery Strategy (COSFRS) 2012, p. 21). The COSFRS (2012, p. 17) identifies pollution associated with agricultural and forestry effluents as being (1) high impact; (2) large in scope; (3) serious in severity; (4) high in timing, and (5) a stress that has direct and indirect mortality results. One of the recovery objectives is to coordinate with the Minister of Agriculture to implement supporting farming practices and environmental farm plans options to decrease agrochemical and nutrient pollution into Oregon spotted frog habitat and work with all levels of government, land managers, and private landowners to inform and encourage best practices and ensure compliance in relation to water quality, hydrology, and land use practice (COSFRS 2012, p. 34).

Water quality and contamination conclusion—Although pesticides could be a threat to the Oregon spotted frog, those threats are undetermined at this time. Oregon spotted frogs are highly aquatic throughout their life cycle, and are thus likely to experience extended exposure to waterborne contaminants. Poor water quality parameters and contaminants may act singly or in combination with other factors to result in inhibited fertilization and embryonic development, developmental anomalies, or reduced growth and survival. Many public water supplies in the United States contain levels of nitrates that routinely exceed lethal concentrations for aquatic larvae of the Oregon spotted frog, and reduced water quality is documented in a number of occupied sub-basins. Although more work on the species' ecotoxicology is warranted, based on the best information available, we consider water quality and contamination to be a threat to the Oregon spotted frog across the range.

Hybridization

Hybridization between Oregon spotted frogs and closely related frog species is unlikely to affect the survival of the Oregon spotted frog. Natural hybridization between Oregon spotted frogs and Cascade frogs has been demonstrated experimentally and verified in nature (Haertel and Storm 1970, pp. 436–444; Green 1985, p. 263). However, the offspring are infertile, and the two species seldom occur together. Hybridization between Oregon spotted frogs and red-legged frogs has also been confirmed (I.C. Phillipsen, K. McAllister, and M. Hayes unpublished data), but it is unknown if the hybrids are fertile. Because, Oregon spotted frog and Columbia spotted frog populations are not known to occur together, based on the best available information, we do not consider hybridization to be a threat to Oregon spotted frogs.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). The term "climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although

shorter or longer periods also may be used (IPCC 2007a, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is "very likely" (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, strong scientific data support projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2012 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). No single method for conducting such analyses applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even 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, the species does not necessarily meet the definition of an "endangered species" or a "threatened species" under the Act. If a species is listed as an endangered or threatened species, 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.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Therefore, we use "downscaled" projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). With regard to our analysis for the Oregon spotted frog, downscaled projections are available.

The climate in the Pacific Northwest (PNW) has already experienced a warming of 0.8 degrees Celsius (C) (1.4 degrees Fahrenheit (F)) during the 20th century (Mote *et al.* 2008, p.3). Using output from eight climate models the PNW is projected to warm further by 0.6 to 1.9 degrees C (1.1 to 3.4 degrees F) by the 2020s, and 0.9 to 2.9 degrees C (1.6 to 5.2 degrees F) by the 2040s (Mote *et al.* 2008, pp. 5–6). Additionally, the majority of models project wetter winters and drier summers (Mote *et al.* 2008, p.7), and of greatest consequence, a reduction in regional snowpack, which supplies water for ecosystems during the dry summer (Mote *et al.* 2003). The small summertime precipitation increases projected by a minority of models do not change the fundamentally dry summers of the PNW and do not lessen the increased drying of the soil column brought by higher temperatures (Mote *et al.* 2003, p. 8).

Watersheds that are rain dominated (such as the Fraser River in British Columbia and the Black River in Washington) will likely experience higher winter streamflow because of increases in average winter precipitation, but overall will experience relatively little change with respect to streamflow timing (Elsner *et al.* 2010, p. 248). Water temperatures for western Washington are generally cooler than those in the interior Columbia basin; however, climate change predictions indicate the summertime stream temperatures exceeding 19.5 degrees C (67.1 degrees F) will increase, although by a smaller fraction than the increases in the interior Columbia basin (Mantua *et al.* 2010, p. 199).

Transient basins (mixed rain- and snowmelt-dominant usually in mid elevations, such as Lower Chilliwack, SF Nooksack, White Salmon, and Middle Klickitat Rivers sub-basins in Washington) will likely experience significant shifts in streamflow and water temperature, becoming rain dominant as winter precipitation falls more as rain and less as snow, and undergo more severe summer low-flow periods and more frequent days with intense winter flooding (Elsner *et al.*

2010, pp. 248, 252, 255; Mantua *et al.* 2010, entire).

Snowmelt-dominated watersheds, such as White Salmon in Washington and the Upper Deschutes, Little Deschutes, and Klamath River sub-basins in Oregon, will likely become transient, resulting in reduced peak spring streamflow, increased winter streamflow, and reduced late summer flow (Littell *et al.* 2009, p. 8). In snowmelt-dominated watersheds that prevail in the higher altitude catchments and in much of the interior Columbia Basin, flood risk will likely decrease and summer low flows will decrease in most rivers under most scenarios (Littell *et al.* 2009, p. 13).

In Washington, the snow water equivalent measured on April 1 is projected to decrease by 28 to 30 percent across the State by the 2020s, 38 to 46 percent by the 2040s, and 56 to 70 percent by the 2080s, and the areas with elevations below 3,280 ft (1,000 m) will experience the largest decreases in snowpack, with reductions of 68 to 80 percent by the 2080s (Elsner *et al.* 2010, p. 244). In the Puget Trough sub-basins, summertime soil moisture will decrease as a result of the warming climate and reduced snowpack. While annual precipitation is projected to slightly increase across the State, by 3.4 percent by the 2080s, the seasonality of the precipitation will change more dramatically with increased winter and decreased summer precipitation, with most of the precipitation falling between October and March (Elsner *et al.* 2010, p. 247).

Climate change models predict that water temperatures will rise throughout Oregon as air temperatures increase into the 21st century. A decline in summer stream flow may exacerbate water temperature increases as the lower volume of water absorbs solar radiation (Chang and Jones, p. 134).

Analyses of the hydrologic responses of the upper Deschutes basin (including the Upper and Little Deschutes River sub-basins) and the Klamath Basin to climate change scenarios indicates that the form of precipitation will shift from predominately snow to rain and cause decreasing spring recharge and runoff and increasing winter recharge and runoff (Waibel 2011, pp., 57–60; Mayer and Naman 2011, p. 3). However, there is spatial variation within the Deschutes sub-basins as to where the greatest increases in recharge and runoff will occur (Waibel 2011, pp., 57–60). Changes in seasonality of stream flows may be less affected by climate change along the crest of the Cascades in the upper watersheds of the Deschutes, Klamath, and Willamette River basins in Oregon, where many rivers receive groundwater recharge from subterranean aquifers and springs (Chang and Jones 2010, p. 107). Summer stream flows may thus be sustained in High Cascade basins that are groundwater fed (Chang and Jones 2010, p. 134). Conversely, Mayer and Naman (2011 p. 1) indicate that streamflow into Upper Klamath Lake will display absolute decreases in July-September base flows in groundwater basins as compared to surface-dominated basins. This earlier discharge of water in the spring will result in less streamflow in the summer (Mayer and Naman 2011, p. 12).

Although predictions of climate change impacts do not specifically address Oregon spotted frogs, short- and long-term changes in precipitation patterns and temperature regimes will likely affect wet periods, winter snow pack, and flooding events (Chang and Jones 2010). These changes are likely to affect amphibians through a variety of direct and indirect pathways, such as range shifts, breeding success, survival, dispersal, breeding phenology, aquatic habitats availability and quality, food webs, competition, spread of diseases, and the interplay among these factors (Blaustein *et al.* 2010 entire; Hixon *et al.* 2010, p. 274; Corn 2003 entire). Amphibians have species-specific temperature tolerances, and exceeding these thermal thresholds is expected to reduce survival (Blaustein *et al.* 2010, pp. 286–287). Earlier spring thaws and warmer ambient temperatures may result in earlier breeding, especially at lower elevations in the mountains where breeding phenology is driven more by snow pack than by air temperature (Corn 2003, p. 624). Shifts in breeding phenology may also result in sharing breeding habitat with species not previously encountered and/or new competitive interactions and predator/prey dynamics (Blaustein *et al.* 2010. pp. 288, 294). Oregon spotted frogs are highly aquatic and reductions in summer flows may result in summer habitat going dry, potentially resulting in increased mortality or forcing frogs to seek shelter in lower quality wetted areas where they are more susceptible to predation.

Amphibians are susceptible to many types of pathogens including trematodes, copepods, fungi, oomycetes, bacteria, and viruses. Changes in temperature and precipitation could alter host-pathogen interactions and/or result in range shifts resulting in either beneficial or detrimental impacts on the amphibian host (Blaustein *et al.* 2010, p. 296). Kiesecker *et al.* (2001a, p. 682) indicate climate change events, such as El Nino/Southern Oscillation, that result in less precipitation and reduced water depths at egg-laying sites results in high mortality of embryos because their exposure to UV–B and vulnerability to infection (such as Saprolegnia) is increased. Warmer temperatures and less freezing in areas occupied by bullfrogs is likely to increase bullfrog winter survivorship, thereby increasing the threat from predation. Uncertainty about climate change impacts does not mean that impacts may or may not occur; it means that the risks of a given impact are difficult to quantify (Schneider and Kuntz-Duriseti 2002, p. 54; Congressional Budget Office 2005, entire; Halsnaes *et al.* 2007, p. 129). Oregon spotted frogs occupy habitats at a wide range of elevations, and all of the occupied sub-basins are likely to experience precipitation regime shifts; therefore, the Oregon spotted frog's response to climate change is likely to vary across the range and the population-level impacts are uncertain. The interplay between Oregon spotted frogs and their aquatic habitat will ultimately determine their population response to climate change. Despite the potential for future climate change throughout the range of the species, as discussed above, we have not identified, nor are we aware of any data on, an appropriate scale to evaluate habitat or population trends for the Oregon spotted frog or to make predictions about future trends and whether the species will be significantly impacted.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

The U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), maintains voluntary agreements with private landowners to apply pesticides within the United States. Based on their 2010 Operational Procedures, all water bodies (rivers, ponds, reservoirs, streams, vernal pools, wetlands, etc.) will be avoided by a minimum of a 50-foot buffer for ground application of bait, a 200-foot buffer for aerial application of bait, and a 500-foot buffer for the aerial application of liquids (USDA APHIS 2010 Treatment Guidelines, p. 4). As previously described under other threat factors, conservation efforts may also help reduce the threat of other natural or manmade factors affecting the species.

Summary of Other Natural or Manmade Factors

Many of the Oregon spotted frog breeding locations are small and isolated from other breeding locations. Moreover, due to their fidelity to breeding locations and vulnerability to

fluctuating water levels, predation, and low overwinter survival, Oregon spotted frogs can experience rapid population turnovers that they may not be able to overcome. Genetic work indicates low genetic diversity within and high genetic differentiation among the six Oregon spotted frog groups identified by Blouin, and each of these groups has the signature of complete isolation with two groups showing indications of recent genetic drift. Poor water quality parameters and contaminants may act singly or in combination with other factors to result in inhibited fertilization and embryonic development, developmental anomalies, or reduced growth and survival. Oregon spotted frogs in every occupied sub-basin are subject to more than one stressor, such as loss or reduced quality of habitat and predation and, therefore, may be more susceptible to mortality and sublethal effects. The changing climate may exacerbate these stressors. Therefore, based on the best information available, we conclude that other natural or manmade factors are a threat to the Oregon spotted frog, which has significant population effects occurring throughout the entire (current) range of the species and expected to continue into the future.

Cumulative Effects From Factors A Through E

The Oregon spotted frog faces several threats, and all occupied sub-basins are subjected to multiple threats, which cumulatively pose a risk to individual populations (See Table 2). Many of these threats are intermingled, and the magnitude of the combined threats to the species is greater than the individual threats. For example, the small sizes and isolation of the majority of Oregon spotted frog breeding locations makes Oregon spotted frogs acutely vulnerable to fluctuating water levels, disease, predation, poor water quality, and extirpation from stochastic events. Hydrologic changes, resulting from activities such as water diversions and removal of beavers, increases the likelihood of fluctuating water levels and temperatures and may also facilitate predators. Existing regulatory mechanisms facilitate hydrologic changes, and restoration actions are specifically designed to benefit salmonid species, which often results in the reduction of habitat quality and quantity for Oregon spotted frogs where they overlap.

Habitat management and a warming climate may improve conditions for pathogens and predators. *Saprolegnia*, Bd, and *Ribeiroia ondatrae* have been found in Oregon spotted frogs, and compounded with other stressors, such as UV–B exposure, degradation of habitat quality, or increased predation pressure, may contribute to population declines. Bd and *R. ondatrae*, in particular, infect post-metamorphic frogs and reductions in these life stages are more likely to lead to population declines. Sub-basins projected to transition from snow-dominant or transient to rain-dominant will be less susceptible to freezing temperatures with the expectation of reduced mortality of bullfrogs during winter and increased predation risk to Oregon spotted frogs.

Amphibian declines may frequently be associated with multiple correlated factors (Adams 1999, pp. 1167–1169). Two of the greatest threats to freshwater systems in western North America, exotic species and hydrological changes, are often correlated. In addition, occurrence and abundance of bullfrogs may be linked with invasions by nonnative fish (Adams *et al.* 2003, p. 349). Adams (1999) examined the relationships among introduced species, habitat, and the distribution and abundance of red-legged frogs in western Washington. Red-legged frog occurrence in the Puget lowlands was more closely associated with habitat structure and exotic fish than with the presence of bullfrogs (Adams 1999, pp. 1167–1168), and similar associations were found in a recent study in Oregon's Willamette Valley (Pearl *et al.* 2005b, p. 16). The spread of exotic species is correlated with a shift toward greater permanence in wetland habitats regionally (for example, Kentula *et al.* 1992, p. 115). For example, exotic fish and bullfrogs are associated with permanent wetlands. Conservation of more ephemeral wetland habitats, which directly benefit native amphibians such as Oregon spotted frogs, would be expected to reduce predation and competition threats posed by exotic fish and bullfrogs (Adams 1999, pp. 1169–1170).

Amphibians are affected by complex interactions of abiotic and biotic factors and are subjected simultaneously to numerous interacting stressors. For example, contaminants and UV–B radiation may result in mortality or induce sublethal effects on their own, but they may have synergistic, interaction effects that exceed the additive effects when combined. Some stressors, such as contaminants, may hamper the immune system, making amphibians more susceptible to pathogenic infections (Kiesecker 2002 p. 9902). Predator presence can alter the behavior of amphibians, resulting in more or less exposure to UV–B radiation (Michel and Burke 2011), thereby altering the rate of malformations. Climate-driven dry events that result in lower water levels may concentrate contaminants, as well as increase the amount of exposure to UV–B radiation. While any one of these individual stressors may not be a concern, a contaminant added to increased UV–B exposure and a normally healthy population level of *Ribeiroia ondatrae* may lead to a higher mortality rate or an increased number of malformed frogs that exceeds the rate caused by any one factor alone (Blaustein *et al.* 2003 entire; Szurocksi and Richardson 2009 p. 382). Oregon spotted frogs in every occupied sub-basin are subject to more than one stressor and, therefore, may be more susceptible to mortality and sublethal effects.

The historical loss of Oregon spotted frog habitats and lasting anthropogenic changes in natural disturbance processes are exacerbated by the introduction of reed canarygrass, nonnative predators, and potentially climate change. In addition, current regulatory mechanisms and voluntary incentive programs designed to benefit fish species have inadvertently led to the continuing decline in quality of Oregon spotted frog habitats in some locations. The current wetland and stream vegetation management paradigm is generally a no-management or restoration approach that often results in succession to a tree- and shrub-dominated community that unintentionally degrades or eliminates remaining or potential suitable habitat for Oregon spotted frog breeding. Furthermore, incremental wetland loss or degradation continues under the current regulatory mechanisms. If left unmanaged, these factors are anticipated to result in the eventual elimination of remaining suitable Oregon spotted frog habitats or populations. The persistence of habitats required by the species is now largely management dependent.

Conservation efforts to ameliorate impacts from habitat degradation and predators are currently under way; however, the benefits of these conservation actions to Oregon spotted frogs are site-specific and do not counteract the impacts at a sub-basin scale. The cumulative effects of these threats are more than additive, and removing one threat does not ameliorate the others and may actually result in an increase in another threat. For example, removing livestock grazing to improve water quality—without continuing to manage the vegetation—allows invasive reed canarygrass, trees, and shrubs to

grow and effectively eliminate egg-laying habitat.

Therefore, based on the best information available, we conclude that the cumulative effects from factors discussed in Factors A, C, D, and E are a threat to the Oregon spotted frog, and these threats are significantly affecting populations throughout the entire range of the species. Moreover, these threats are expected to continue into the future.

TABLE 2—THREATS OPERATING WITHIN EACH SUB-BASIN *

Sub-basin	Factor A	Factor C	Factor E
Lower Fraser River	Wetland loss; hydrologic changes; development; grazing, reed canarygrass; water quality.	Introduced warmwater fish; bullfrogs.	Small population size; breeding locations disconnected; contaminants; cumulative effects of other threats; climate change.
Lower Chilliwack River	Grazing; reed canarygrass; water quality.	Introduced warmwater fish	Small population size; breeding locations disconnected; contaminants; cumulative effects of other threats; climate change.
South Fork Nooksack	Grazing; reed canarygrass; shrub encroachment/planting; loss of beavers; water quality.	Introduced coldwater fish	Small population size; cumulative effects of other threats; contaminants; climate change.
Samish River	Wetland loss; grazing; reed canarygrass; shrub encroachment/planting; water quality.	Introduced warmwater fish; introduced coldwater fish.	Breeding locations disconnected; contaminants; cumulative effects of other threats; climate change.
Black River	Wetland loss; reed canarygrass; shrub encroachment/planting; development; loss of beaver; water quality.	Introduced warmwater fish; introduced coldwater fish; bullfrogs.	Small population size; breeding locations disconnected; contaminants; cumulative effects of other threats; climate change.
White Salmon River	Wetland loss; reed canarygrass; water quality.	Introduced coldwater fish	Cumulative effects of other threats; climate change.
Middle Klickitat River	Wetland loss; hydrologic changes; loss of beaver; development; grazing; reed canarygrass; shrub encroachment; water management.	Introduced warmwater fish; introduced coldwater fish, bullfrogs.	Cumulative effects of other threats; climate change.
Lower Deschutes	Shrub encroachment	Introduced coldwater fish	Small population size; single occupied site within sub-basin; isolated from frogs in other sub-basins; cumulative effects of other threats; climate change.
Upper Deschutes	Wetland loss; reed canarygrass; shrub encroachment; hydrological changes (water management).	Introduced warmwater fish; introduced coldwater fish, bullfrogs.	Breeding locations disconnected; cumulative effects of other threats; climate change.
Little Deschutes	Wetland loss; hydrological changes (water management); development; grazing; reed canarygrass; shrub encroachment.	Introduced coldwater fish, bullfrogs.	Breeding locations disconnected; cumulative effects of other threats; climate change.
McKenzie	Shrub encroachment	Introduced coldwater fish	Only two breeding locations in sub-basin, which are disconnected; cumulative effects of other threats; climate change.
Middle Fork Willamette	Shrub encroachment	Introduced coldwater fish	Single occupied site in sub-basin; disconnected from other sub-basins; cumulative effects of other threats; climate change.
Williamson	Development; grazing; shrub encroachment; loss of beaver.	Introduced warmwater fish; introduced coldwater fish.	Small population size; breeding locations disconnected; cumulative effects of other threats; climate change.
Upper Klamath Lake	Water management; development; shrub and reed canarygrass encroachment; grazing.	Introduced warmwater fish; introduced coldwater fish; bullfrogs.	Small population size; breeding locations disconnected; cumulative effects of other threats; climate change.
Upper Klamath	Wetland loss; water management; development; grazing; shrub encroachment; loss of beaver.	Introduced warmwater fish; introduced coldwater fish.	Small population size; breeding locations disconnected; cumulative effects of other threats; climate change.

* Existing regulatory mechanisms (Factor D) have been insufficient to significantly reduce or remove the threats to the Oregon spotted frog.

* Factors A, C, and E are operative within some to several occupied sites within each sub-basin, to differing degrees. To clarify, these threats apply to locations within each sub-basin, and do not necessarily apply to the sub-basin in its entirety. Detailed information is available in a rangewide threats synthesis document, which is available from Washington Fish and Wildlife Office (see **ADDRESSES**).

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Oregon spotted frog. Past human actions have destroyed, modified, and curtailed the range and habitat available for the Oregon spotted frog, which is now absent from 76 to 90 percent of its former range. The Oregon spotted frog populations within two of the sub-basins are declining, but the population trend in the other 13 sub-basins is undetermined. However, the Oregon spotted frog is extant in only 15 of 31 sub-basins where it historically occurred. In addition, the majority of remaining populations are isolated both between and within sub-basins, with minimal opportunity for natural recolonization. These isolated populations are, therefore, vulnerable to ongoing threats and extirpation, and threats are known to be ongoing or increasing across the range of the Oregon spotted frog, as summarized below.

Habitat necessary to support all life stages is continuing to be impacted and/or destroyed by human activities that result in the loss of wetlands to land conversions; hydrologic changes resulting from operation of existing water diversions/manipulation structures, new and existing residential and road developments, drought, and removal of beavers; changes in water temperature and vegetation structure resulting from reed canarygrass invasions, plant succession, and restoration plantings; and increased sedimentation, increased water temperatures, reduced water quality, and vegetation changes resulting from the timing, intensity, and location of livestock grazing. Oregon spotted frogs in all currently occupied sub-basins in British Columbia, Washington, and Oregon are subject to one or more of these threats to their habitat. Eleven of the 15 sub-basins are currently experiencing a high to very high level of habitat impacts, and these impacts are expected to continue into the future.

Disease continues to be a concern, but more information is needed to determine if disease is a threat to Oregon spotted frogs. At least one nonnative predaceous species occurs within each of the sub-basins currently occupied by Oregon spotted frogs. Introduced fish have been documented within each sub-basin; these introduced species prey on tadpoles, negatively affect overwintering habitat, and can significantly threaten Oregon spotted frog populations, especially during droughts. Bullfrogs (and likely green frogs) prey on juvenile and adult Oregon spotted frogs, and bullfrog tadpoles can outcompete or displace Oregon spotted frog tadpoles. In short, nonnative bullfrogs effectively reduce the abundance of all Oregon spotted frog life stages and pose an added threat to a species that has significant negative impacts rangewide from habitat degradation. Nine of the 15 occupied sub-basins are currently experiencing moderate to very high impacts due to predation by introduced species, and these impacts are expected to continue into the future.

Lack of essential habitat protection under Federal, State, Provincial, and local laws leaves this species at continued risk of habitat loss and degradation in British Columbia, Washington, and Oregon. In many cases, laws and regulations that pertain to retention and restoration of wetland and riverine areas are a no-management (i.e., avoidance) approach, or are designed to be beneficial to fish species (principally salmonids), resulting in the elimination or degradation of Oregon spotted frog early-seral habitat. In other cases, no regulations address threats related to the draining or development of wetlands or hydrologic modifications, which can also eliminate or degrade Oregon spotted frog habitat. Therefore, degradation of habitat is ongoing despite regulatory mechanisms, and these mechanisms have been insufficient to significantly reduce or remove the threats to the Oregon spotted frog.

Many of the Oregon spotted frog breeding locations are small and isolated from other breeding locations. Due to their fidelity to breeding locations and vulnerability to fluctuating water levels, predation, and low overwinter survival, Oregon spotted frogs can experience rapid population turnovers that they may not be able to overcome. Low connectivity among occupied sub-basins and among breeding locations within a sub-basin, in addition to small population sizes, contributes to low genetic diversity within genetic groups and high genetic differentiation among genetic groups. Oregon spotted frogs in every occupied sub-basin are subject to more than one stressor, such as loss or reduced quality of habitat and predation. Therefore, the species may be more susceptible to the synergistic effects of combined threats, which may be exacerbated by climate change. The threat to Oregon spotted frogs from other natural or manmade factors is occurring throughout the entire range of the species, and the population-level impacts are expected to continue into the future.

All of the known Oregon spotted frog occupied sub-basins are currently affected by one or more of these threats, which reduce the amount and quality of available breeding, summer, and overwintering habitat. While the risk to an individual site from each of these factors may vary, the cumulative risk of these threats to each site is high. This scenario is reflected in declining and/or small populations, which constitute the majority the Oregon spotted frog's remaining distribution. We find that Oregon spotted frogs are likely to become endangered throughout all or a significant portion of their range within the foreseeable future, based on the immediacy, severity, and scope of the threats described above. We do not, however, have information at the present time to suggest that the existing threats are of such a great magnitude that Oregon spotted frogs are in immediate danger of extinction. Threats are not geographically concentrated in any portions of the species' range, and the species is extant and redundant at a number of localities within 13 of 15 sub-basins within British Columbia, Washington, and Oregon. One extant population remains in each of the Lower Deschutes River and Middle Fork Willamette sub-basins in Oregon. Egg mass surveys continue to document reproducing adults in most areas, although in at least two locations within the current range, Oregon spotted frogs may no longer be extant (i.e., the Maintenance Detachment Aldergrove site in British Columbia and the 110th Avenue site at Nisqually National Wildlife Refuge in Washington).

Therefore, on the basis of the best available scientific and commercial information, we propose listing the Oregon spotted frog as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The 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. 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, and we have never addressed in our regulations: (1) 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 (2) what qualifies a portion of a range as "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.

The best available data suggests that, under current conditions, Oregon spotted frogs will likely continue to decline toward extinction. Having already determined that the Oregon spotted frog is a threatened species throughout its range, we considered whether threats may be so concentrated in some portion of its range that, if that portion were lost, the entire species would be in danger of extinction. We reviewed the entire supporting record for the status review of this species with respect to the geographic concentrations of threats, and the significance of portions of the range to the conservation of the species. Oregon spotted frogs currently occupy 15 sub-basins that are widely distributed, such that a catastrophic event in one or more of the sub-basins would not extirpate Oregon spotted frogs throughout their range. Based on our five-factor analysis of threats throughout the range of the Oregon spotted frog, we found threats to the survival of the species occur throughout the species' range and are not significantly concentrated or substantially greater in any particular portion of their range. Therefore, we find that there is no significant portion of the Oregon spotted frog's range that may warrant a different status. Therefore, the species as a whole is not presently in danger of extinction, and does not meet the definition of an endangered species under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Washington, Oregon, and California would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Oregon spotted frog. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although the Oregon spotted frog is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal

action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include actions to manage or restore habitat; actions that may negatively affect the species through removal, conversion, or degradation of habitat; actions that may introduce nonnative predaceous species; or actions that require collecting or handling the species. Examples of activities conducted, regulated or funded by Federal agencies that may affect listed species or their habitat include, but are not limited to:

(1) Vegetation management such as planting, grazing, burning, mechanical treatment, and/or application of pesticides adjacent to or in Oregon spotted frog habitat;

(2) Water manipulation, such as flow management, water diversions, or canal dredging or piping;

(3) Recreation management actions such as development of campgrounds or boat launches adjacent to or in Oregon spotted frog habitat;

(4) River restoration, including channel reconstruction, placement of large woody debris, vegetation planting, reconnecting riverine floodplain, or gravel placement adjacent to or in Oregon spotted frog habitat;

(5) Pond construction;

(6) Issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; and

(7) Import, export, or trade of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the Oregon spotted frog, such as bullfrogs, green frogs, or warm or cold water fishes to the States of Washington, Oregon, or California;

(3) Unauthorized modification of the wetted area or removal or destruction of emergent aquatic vegetation in any body of water in which the Oregon spotted frog is known to occur; and

(4) Unauthorized discharge of chemicals into any waters in which the Oregon spotted frog is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6158; facsimile 503–231–6243).

If the Oregon spotted frog is listed under the Act, the State of Oregon's Endangered Species Act (O.R.S. sec. 496.171–996; 498.026) is automatically invoked, which would also prohibit take of this species and encourage conservation by State government agencies. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species. Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species will be reinforced and supplemented by protection under State law.

The Oregon spotted frog is currently listed under the State of Washington's ESA as endangered. The State of California's ESA is not automatically invoked if the Oregon spotted frog is listed under the Act. We are unaware of any legal protections afforded to the species in British Columbia upon listing.

Consideration of a 4(d) Special Rule

The Service may develop specific prohibitions and exceptions that are tailored to the specific conservation needs of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into a special rule under section 4(d) of the Act, but the 4(d) special rule will also include provisions that are tailored to the specific conservation needs of the threatened species and may be more or less restrictive than the general provisions at 50 CFR 17.31. We are considering whether it is appropriate to develop a 4(d) rule that would not prohibit take that is incidental to implementing a State comprehensive Oregon spotted frog conservation program, implementing regional or local Oregon spotted frog conservation programs, and activities or efforts conducted by individual landowners that are outside of a more structured program but are still consistent with maintaining or advancing the conservation of Oregon spotted frog.

State, Regional, and Local Conservation Programs

We anticipate that conservation programs covered under such a 4(d) rule would need to be developed and administered by an entity having jurisdiction or authority over the activities in the program; would need to be approved by the Service as adequately protective to provide a conservation benefit to the Oregon spotted frog; and may need to include adaptive management, monitoring, and

reporting components sufficient to demonstrate that the conservation objectives of the plan are being met. For example, a comprehensive conservation program that has a clear mechanism for enrollment of participating landowners that want to manage their lands for the benefit of the Oregon spotted frog may not be prohibited from taking Oregon spotted frogs. In making its determination, the Service would consider:

(i) How the program addresses the threats affecting the Oregon spotted frog within the program area;

(ii) How the program establishes objective, measurable biological goals and objectives for population and habitat necessary to ensure a conservation benefit, and provides the mechanisms by which those goals and objectives would be achieved;

(iii) How the program administrators demonstrate the capability and funding mechanisms for effectively implementing all elements of the conservation program, including enrollment of participating landowners, monitoring of program activities, and enforcement of program requirements;

(iv) How the program employs an adaptive management strategy to ensure future program adaptation as necessary and appropriate; and

(v) How the program includes appropriate monitoring of effectiveness and compliance.

The considerations presented here are meant to encourage the development of efforts to improve habitat conditions and the status of the Oregon spotted frog across its range. For the Service to approve coverage of a comprehensive or local/regional conservation program under the 4(d) special rule being considered, the program must provide a conservation benefit to Oregon spotted frog. Conservation, as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary." The program may also be periodically reviewed by the Service to determine that it continues to provide the intended conservation benefit to Oregon spotted frog. As a result of this provision, the Service expects that conservation actions will be implemented with a high level of certainty that the program will lead to the long-term conservation of Oregon spotted frog.

Activities Conducted by Individual Private Landowners

The Service is considering whether it is appropriate to develop a 4(d) rule on non-Federal lands when those lands are managed following technical guidelines that have been developed in coordination with a State or Federal agency or agencies responsible for the management and conservation of fish and wildlife, or their agent(s), and that has been determined by the Service to provide a conservation benefit to the Oregon spotted frog. For example, a conservation district develops specific technical guidelines for controlling reed canarygrass that the Service agrees maintains breeding habitat, hence there is a conservation benefit to the species. Individual non-Federal landowners following these specific technical guidelines may be exempted from take. Guidelines should incorporate procedures, practice standards, and conservation measures that promote the continued existence of the Oregon spotted frog.

Ideally, appropriate guidelines would be associated with a program that would provide financial and technical assistance to participating landowners to implement specific conservation measures beneficial to Oregon spotted frog that also contribute to the sustainability of landowners' activities. Conservation measures encompassed by such a program should be consistent with management or restoration of emergent wetland habitats that include vegetation management and appropriate water management for maintaining habitat for Oregon spotted frog.

We believe including such a provision in a 4(d) special rule for individual landowner activities will promote conservation of the species by encouraging landowners with Oregon spotted frog to continue managing the remaining landscape in ways that meet the needs of their operations or activities while simultaneously supporting suitable habitat for the frog and other wetland-dependent species.

We will consider all comments and information received during our preparation of a final determination on the status of the species and a 4(d) special rule. Accordingly, the final decision may differ from our original proposal.

Educational and Scientific Activities

Finally, we are considering whether it is appropriate to include a provision for take of Oregon spotted frog when that take is in accordance with applicable State law for educational or scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act. An example of an activity that could be covered under such a provision includes presence/absence and population monitoring surveys. Such surveys are typically conducted during the breeding season and may cause disturbance in the breeding habitat, particularly when egg mass counts are used to estimate the number of frogs. These surveys entail walking transects through the shallow-water breeding habitat, which may cause some disturbance of breeding frogs and a low likelihood of trampling of egg masses or frogs. However, if surveys are conducted in accordance with scientifically accepted methodologies, minimal impact to Oregon spotted frogs, primarily in the form of harassment, should occur.

Accordingly, we are soliciting public comment as to which prohibitions, and exceptions to those prohibitions, are necessary and advisable to provide for the conservation of the Oregon spotted frog (see Public Comments above). After reviewing the initial public comments on this topic, we will evaluate whether a 4(d) special rule is appropriate for the Oregon spotted frog and, if so, publish a proposed 4(d) special rule for public comment. Currently, we have not proposed a 4(d) special rule for Oregon spotted frog. If the Oregon spotted frog is ultimately listed as a threatened species without a 4(d) special rule, the general prohibitions (50 CFR 17.31) and exceptions to these prohibitions (50 CFR 17.32) for threatened species would be applied to the Oregon spotted frog, as explained above.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one public hearing on this proposal, if

requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Washington Fish and Wildlife Office, Oregon Fish and Wildlife Office—Bend Field Office, and Klamath Falls Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. In § 17.11(h) add an entry for "Frog, Oregon spotted" to the List of Endangered and Threatened Wildlife in alphabetical order under "Amphibians" to read as set forth below:

§ 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						
*	*	*	*	*	*	*	*
AMPHIBIANS							
*	*	*	*	*	*	*	*
Frog, Oregon spotted.	*Rana pretiosa*	Canada (BC); U.S.A. (WA, OR, CA).	Entire	T		NA	NA
*	*	*	*	*	*	*	*

* * * * *

Dated: July 18, 2013.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–20986 Filed 8–28–13; 8:45 am]

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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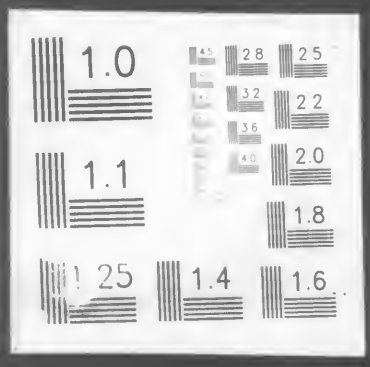
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